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IN THE

District Court of the United States,

FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

No. M-274.

UNITED STATES EX REL. THOMAS W. CUNNINGHAM	B. M. Golder, Otto Kraus, Jr.
v.	
WALTER C. FETTERS, UNITED STATES MARSHAL.	Howard Benton Lewis.

DOCKET ENTRIES.

Dec. 23, 1930. Petition for and Order granting writ of Habeas Corpus filed.

Dec. 23, 1930. Writ of Habeas Corpus returned: "I have the body here in Court" and filed.

Dec. 23, 1930. Return to Writ of Habeas Corpus filed.

Dec. 23, 1930. Traverse to return to Writ of Habeas Corpus filed.

Dec. 23, 1930. Stipulation of counsel as to hearing in these proceedings filed.

Dec. 23, 1930. Argued.

Dec. 23, 1930. Opinion, Dickinson J., granting leave to enter an order discharging the relator without day, filed.

Dec. 23, 1930. Order of Court discharging relator without day upon entry of his own recognizance in $1000. filed.

Dec. 23, 1930.	Recognizance of Relator in $1000. filed.
Dec. 23, 1930.	Assignments of Error filed.
Dec. 23, 1930.	Petition for appeal filed.
Dec. 23, 1930.	Order of Court allowing petition for appeal filed.
Dec. 26, 1930.	Citation allowed and issued.
Dec. 26, 1930.	Copy of notice of appeal filed.
Dec. 26, 1930.	Testimony filed.
Dec. 29, 1930.	Citation returned; "service accepted" and filed.
Dec. 30, 1930.	Præcipe for transcript of record sur appeal filed.

PETITION FOR WRIT OF HABEAS CORPUS.

(Filed December 23, 1930.)

IN THE
DISTRICT COURT OF THE UNITED STATES,
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

M-274.

United States of America ex rel. Thomas W. Cunningham

v.

Walter C. Fetters, United States Marshal.

To the Honorable, the Judges of the District Court of the United States for the Eastern District of Pennsylvania:

1. Your petitioner, Thomas W. Cunningham, respectfully represents to your Honorable Court that he is a citizen of the United States and a resident of the City and County of Philadelphia, State of Pennsylvania, within this judicial district.

2. Your petitioner further represents that he is now actually, unjustly and unlawfully imprisoned and restrained of his liberty and detained by Walter C. Fetters, United States Marshal, by virtue of a warrant issued by Honorable O. B. Dickinson, United States District Judge, Eastern District of Pennsylvania, the said warrant of arrest having been issued the twenty-sixth day of April, 1928. A copy of said warrant is attached hereto and marked Exhibit "A."

3. That in the affidavit for the warrant of arrest, it is alleged on behalf of the United States Government, through S. Busha, agent of Department of Justice,

"upon his knowledge, information and belief, that on February 21, 1927, at Washington, in the District of Columbia, Thomas W. Cunningham, did knowingly, wilfully and unlawfully fail, neglect and refuse to answer certain questions propounded to him during his attendance before a committee of the Senate of the United States as a witness who had been summoned to give testimony upon a matter then under inquiry before said committee, said questions being pertinent to the matter then under inquiry before said committee.

"In violation of Section 102 of the Revised Statutes of the United States, and against the peace and dignity of the said United States.

"This deponent bases his knowledge, information and belief upon an indictment found by a Grand Jury of the United States of America in and for the District of Columbia, a duly certified copy of said indictment being thereto attached and made part hereof.

(Signed) S. BUSHA."

A copy of said affidavit is hereto attached and marked Exhibit "B."

4. That your petitioner has never been guilty of any crime against the United States of America and in particular of any violation of Revised Statutes No. 102 of the United States of America, in that he has at no time failed, neglected or refused to answer any questions pertinent to any inquiry made by either House of Congress or by a committee of either House of Congress, concerning a matter over which each House had jurisdiction to investigate.

5. Your petitioner further represents that the indictment failed to disclose *inter alia* that the questions therein set forth at large, which your relator refused to answer, were pertinent questions in the inquiry then being made by the particular committee of the United

States Senate therein described; that the said indictment shows conclusively that none of the questions and answers set forth in said indictment had anything to do with the general election of William S. Vare, a candidate for United States Senate; that said indictment failed to allege and disclose that the inquiry which said committee was then making was one over which by the Constitution of the United States they had jurisdiction and authority. A copy of said indictment is hereto attached and marked Exhibit "C."

WHEREFORE your petitioner prays your Honorable Court that a writ of habeas corpus may issue, directed to the said Walter C. Fetters, United States Marshal aforesaid, and to each and all of his deputies, requiring him and them to bring and have your petitioner, together with a true cause of the detention of your petitioner, before this Court at the time by this Court determined to the end that due inquiry may be had in the premises and that the Court may proceed to determine the facts of this case in that regard and the legality of your petitioner's imprisonment, restraint and detention, and thereupon to dispose of this petitioner as law and justice may require.

And your petitioner will ever pray, etc.

(Sgd.) THOMAS W. CUNNINGHAM.

IN THE DISTRICT COURT OF THE UNITED STATES,
EASTERN DISTRICT OF PENNSYLVANIA, } *ss.:*

THOMAS W. CUNNINGHAM, being duly sworn according to law, deposes and says that he is the petitioner in the foregoing petition, and that the facts set forth therein are true and correct to the best of his knowledge, information and belief.

(Sgd.) THOMAS W. CUNNINGHAM.

Sworn to and subscribed before me this twenty-third day of December, A. D. 1930.

(Sgd.) GEORGE BRODBECK,
Clerk, U. S. District Court,
Eastern District of Pennsylvania.

EXHIBIT "A."

WARRANT.

To the President of the United States of America.

To the United States Marshal for the Eastern District of Pennsylvania:

Whereas, the above affidavit has been made in writing before me, a United States District Judge for the Eastern District of Pennsylvania, that on February 21, 1927, at Washington, in the District of Columbia, Thomas W. Cunningham, hereinafter called the defendant, did, knowingly, willfully and unlawfully, violate the statutes of the United States in manner and form as above set forth.

Now, Therefore, You are hereby commanded to apprehend the said defendant, and bring the body forthwith before me to answer according to law.

Given under my hand and seal at Philadelphia, this twenty-sixth day of April, 1928.

(Signed) O. B. Dickinson,
United States District Judge,
Eastern District of Pennsylvania.

EXHIBIT "B."

HBL

COURT OF UNITED STATES COMMISSIONER
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	No.	C. R. 113-1928.
v.	Section	
THOMAS W. CUNNINGHAM	Penal Code	

AFFIDAVIT FOR WARRANT OF ARREST

S. Busha, being duly sworn according to law, deposes and says upon knowledge, information, and belief, that on February 21, 1927, at Washington, in the District of Columbia Thomas W. Cunningham did knowingly, willfully, and unlawfully fail, neglect and refuse to answer certain questions propounded to him during his attendance before a committee of the Senate of the United States as a witness who had been summoned to give testimony upon a matter then under inquiry before said committee, said questions being pertinent to the matter then under inquiry before said committee.

In violation of Section 102 of the Revised Statutes of the United States, and against the peace and dignity of the said United States.

This deponent bases his knowledge, information and belief upon an indictment found by a Grand Jury of the United States of America in and for the District of Columbia, a duly certified copy of said indictment being hereto attached and made part hereof.

(Signed) S. BUSHA

Sworn to and subscribed before me at Philadelphia, this 26th day of April, 1928.

(Signed) O. B. DICKINSON
United States District Judge
Eastern District of Pennsylvania.

EXHIBIT "C."

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

To all to whom these presents come, Greeting:

UNITED STATES OF AMERICA,
DISTRICT OF COLUMBIA, } *ss.:*

Be It Remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the time hereinafter mentioned, among others, was the following proceeding, to wit:

Filed in Open Court Apr. 20, 1928,

Frank E. Cunningham,
Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Criminal Term.

April Term, A. D. 1928.

District of Columbia, ss:

The Grand Jurors of the United States of America, in and for the District of Columbia aforesaid, upon their oath, do present:

That for a considerable period of time prior to the date of the finding of this indictment, the Senate of the United States has been greatly concerned and

disturbed, in connection with the nomination and election of candidates for the office of member of the said Senate of the United States, by the bringing to the attention of the said Senate of the United States of certain allegations and charges of fraudulent, and corrupt, and unlawful practices in connection with such nomination and election of candidates in several States for the said office; and that consequently the said Senate of the United States has been keenly interested in the matter of securing information and data to permit the ascertainment and determination of the truth or falsity of such allegations and charges, as aforesaid, and to enable the said Senate of the United States to ascertain and determine what, if any, other or additional legislation might be advisable upon the general subject of the nomination and election of candidates for the office of member of the said Senate of the United States; and that as a consequence of the making of such allegations and charges, and for the purposes and under the circumstances aforesaid, the Senate of the United States, on May 19, 1926, did adopt a certain resolution (S. Res. 195), that is to say, a resolution of the tenor following:

RESOLVED, that a special committee of five, consisting of three members selected from the majority political party, of whom one shall be a progressive republican, and of two members from the minority political party, shall be forthwith appointed by the President of the Senate; and said committee is hereby authorized and instructed immediately to investigate what moneys, emoluments, rewards, or things of value, including agreements of understandings of support for appointment or election to office have been promised, contributed, made or expended, or shall hereafter be promised, contributed, expended, or made by any person, firm, corporation, or committee, organization,

or association, to influence the nomination of any person as a candidate of any political party or organization for membership in the United States Senate or to contribute to or promote the election of any person as a member of the United States Senate at the general election to be held in November, 1926. Said committee shall report the names of the persons, firms, or corporations, or committees, organizations, or associations that have made or shall hereafter make such promises, subscriptions, advancements, or payments and the amount by them severally contributed or promised as aforesaid; including the method of expenditure of said sums or the method of performance of said agreements, together with all facts in relation thereto.

Said committee is hereby empowered to sit and act at such time or times and at such place or places as it may deem necessary; to require subpœna or otherwise the attendance of witnesses, the production of books, papers, and documents, and to do such other acts as may be necessary in the matter of said investigation.

The chairman of the committee or any member thereof may administer oaths to witnesses. Every person who, having been summoned as a witness by authority of said committee wilfully makes default, or who, having appeared, refused to answer any question pertinent to the investigation heretofore authorized, shall be held to the penalties provided by Section 102 of the Revised Statutes of the United States.

Said committee shall promptly report to the Senate the facts by it ascertained.

And that on June 3, 1926, the Senate of the United States did adopt a certain other resolution (S. Res. 227), that is to say, a resolution of the tenor following:

RESOLVED, That the special Senate Committee created pursuant to Resolution 195, agreed to the 19th day of May, 1926, hereby is authorized to employ stenographic assistance, at a cost not exceeding 25 cents per hundred words, to report such hearings and proceedings as may be had in connection with any subject which may be before said committee and such clerical or other assistance as may be deemed necessary by the committee, that all expenses incurred, including costs of travel by the committee or their assistants, in furtherance of the purposes of said resolution, shall be paid out of the contingent fund of the Senate upon vouchers properly approved. The costs of this investigation shall not exceed $10,000.

And that on June 30, 1926, the Senate of the United States did adopt a certain other resolution (S. Res. 258); that is to say, a resolution of the tenor following:

RESOLVED, That the limit of expenditure to be made under authority of Senate Resolution Numbered 227, agreed to June 3, 1926, be, and the same hereby is, increased from $10,000 to $50,000.

And that on January 11, 1927, the Senate of the United States did adopt a certain other resolution (S. Res. 324) that is to say, a resolution of the tenor following:

Whereas William B. Wilson, of the State of Pennsylvania, has presented his petition to the Senate of the United States contesting the election of William S. Vare as a Senator from Pennsylvania in the election held on the 2nd day of November, 1926; and

Whereas the said William B. Wilson charges in his petition fraudulent and unlawful practices in connection with the nomination and in connection with

the alleged election of the said Vare as Senator of the State of Pennsylvania, and that unless preserved for the use of the Senate evidence relating to said charges and said election will be lost or destroyed; and

Whereas the special committee of five organized under Senate Resolution Number 195, Sixty-ninth Congress, first session, by direction of the Senate has entered upon an investigation pertaining to alleged corrupt practices in the election held November 2, 1926, and in the primary proceeding it is the State of Pennsylvania; Therefore be it

RESOLVED, That the special committee of five constituted under Senate Resolution Number 195, Sixty-ninth Congress, first session, in addition to, and not in detraction from the powers conferred in said resolution, be, and it is hereby, authorized and empowered:

(1) To take possession, in the presence of the said William S. Vare or his representative if the said William S. Vare desires to be present or to have a representative present, and preserve all ballot boxes and other containers of ballots, ballots, return sheets, voters' check lists, tally sheets, registration lists and other records, books and documents used in said senatorial election held in the State of Pennsylvania on the 2nd day of November, 1926.

(2) To take and preserve all evidence as to the various matters alleged in said petition, including any alleged fraud, irregularity, unlawful expenditure of money, and intimidation of voters or other acts or facts affecting the result of said election.

(3) That said committee is hereby vested with all powers of procedure with respect to the subject matter

of this resolution that said committee possesses under Resolution Numbered 195, Sixty-ninth Congress, first session, with respect to the subject matter of that resolution.

(4) That the Sergeant at Arms of the Senate and his deputies are directed to attend the said special committee and to execute its directions. That the said special committee may appoint sub-committees of one or more members with power and authority to act for the full committee in taking possession of evidence and in the subpœnaing of witnesses and taking testimony.

RESOLVED FURTHER, That the expenses incurred in carrying out this resolution shall be paid from the contingent fund of the Senate upon vouchers ordered by the Committee or any sub-committee thereof and approved by the chairman of the committee, the cost of same not to exceed $15,000 in addition to the moneys heretofore authorized to be expended.

WHEREUPON, and by force and under authority of the aforesaid resolutions, the said special committee of five organized under Senate Resolution Number 195, Sixty-ninth Congress, first session, which said committee is hereafter referred to in this indictment as 'the said committee,' was empowered and directed to investigate the entire subject of the alleged fraudulent and corrupt and unlawful practices in connection with the nomination and election of candidates for the office of member of the Senate of the United States, with particular reference to the ascertainment and determination of facts in connection with the alleged election of the said William S. Vare as a member of the Senate of the United States from the State of Pennsylvania, including any alleged fraud, irregularity, unlawful expenditure of money, and intimidation of voters, or

other acts or facts affecting the result of said election, and to report its findings and recommendations to the Senate with a view to enabling the Senate to ascertain and determine what, if any, other or additional legislation might be advisable in the premises; that the said committee did in fact thereupon proceed to exercise that authority and to make such investigation, for the purpose of making such report, findings and recommendations to the Senate, with a view of enabling the Senate to ascertain and determine what, if any, other or additional legislation might be advisable, and the matters so referred to the said committee then and there, to wit, at Washington in said District of Columbia, therefore came under inquiry before the said committee and the said committee, for that purpose and in that behalf, did hold sundry hearings at which witnesses were examined and documents produced.

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

That thereafter, to wit, on the twenty-first day of February, in the year of our Lord one thousand nine hundred and twenty-seven, and at and in the District of Columbia aforesaid, said matters and questions then and there still being matters and questions under inquiry before the said committee and Senate, it became and was a material matter and question before the said committee to ascertain and determine the amount and the source of all moneys and other things of value contributed and donated by one Thomas W. Cunningham, for expenditure and for other use in connection with the nomination and in connection with the alleged election of the said William S. Vare as a member of the Senate of the United States from the State of Pennsylvania; and that the said Thomas W. Cunningham, on the said Twenty-first day of February, in the year of our Lord one thousand nine hundred and twenty-seven, and at and in the District of Columbia aforesaid, hav-

ing been theretofore, to wit, on the fifteenth day of February, in the year of our Lord one thousand nine hundred and twenty-seven, duly served with a subpœna issued by direction of said committee by authority of the Senate of the United States, to appear before the said committee and to give testimony before the said committee, on said twenty-first day of February, in the year of our Lord one thousand nine hundred and twenty-seven, did appear before the said committee as such witness in obedience to such subpœna, and was then and there duly sworn; that thereupon the Honorable James A. Reed, a member and the chairman of the said committee, for said committee, propounded to the said Thomas W. Cunningham, a certain question which, as the said Thomas W. Cunningham then and there well knew, was a question pertinent to said matters and questions then and there under inquiry before the said committee as aforesaid; that is to say, that having made the following statement to the said Thomas W. Cunningham,

"The Chairman: Mr. Cunningham, the committee has called you before it the second time in order to permit you an opportunity to answer the questions you declined to answer before, and afford you the opportunity to answer such other questions as may be put to you. Mr. Cunningham, on your previous examination you stated (reading):

I handed money to Thomas F. Watson $25,000 on the 10th day of April, 1926.

Then this follows, as shown by the record of the proceedings (reading):

The Chairman: Where did you get that money?

Mr. Cunningham: I got that money out of my own private funds.

The Chairman: How is that?

Mr. Cunningham: Out of my own private funds.

The Chairman: Your own private moneys?

Mr. Cunningham: Yes, sir; my own money; my own money.

The Chairman: How long had it been your own money?

Mr. Golder at that time stated an objection, which appears in the record.

The question was repeated as follows (reading):

The Chairman: How long had it been your own money?

Mr. Cunningham: I refuse to answer that question, Senator, as a personal question. It is my own private business,"

the said Honorable James A. Reed then and there said to said Thomas W. Cunningham,

"I now ask you the same question again, Mr. Cunningham", the said Honorable James A. Reed thereby meaning and intending, as the said Thomas W. Cunningham then and there well knew and understood, to elicit from him the said Thomas W. Cunningham, an answer at that time and place

to a question which had been asked him on another occasion, and certain facts which then and there were within the knowledge of the said Thomas W. Cunningham, touching upon said alleged fraudulent, and corrupt, and unlawful practices in connection with the nomination and election of candidates for the office of member of the Senate of the United States, and the ascertainment and determination of facts in connection with the nomination and alleged election of the said William S. Vare as a member of the Senate of the United States for the State of Pennsylvania, and with particular reference to the ascertainment and determination of the amount and source of all moneys and other things of value contributed and donated by the said Thomas W. Cunningham for expenditure and for other use in connection with the nomination and alleged election of the said William S. Vare; and that the said

Thomas W. Cunningham then and there unlawfully did refuse to answer the said question then so propounded to him by the said Honorable James A. Reed; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

SECOND COUNT:

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That, to wit, on the said twenty-first day of February in the year of our Lord one thousand nine hundred and twenty-seven, and at and in the District of Columbia aforesaid, and under the circumstances and conditions and upon the occasion mentioned in the first count of this indictment, the allegations concerning which, in said first count contained, are incorporated in this count by reference as fully and completely as if they were here repeated, and while the matters and questions referred to and set forth, in said first count of this indictment, were matters and questions under inquiry before the said committee and Senate, the said Thomas W. Cunningham, as in the said first count set forth, having been duly served with a subpœna issued by direction of the said committee, and summoned by authority of the Senate of the United States, to appear before the said committee and to give testimony before the said committee, and having appeared before the said committee as such witness, in obedience to the said subpœna and having been then and there duly sworn, a certain other question was propounded to the said Thomas W. Cunningham, by the said Honorable James A. Reed, a member and the chairman of the said committee, for said committee, which question, as the said Thomas W. Cunningham then and there well knew, was a question pertinent to said matters and questions then under inquiry before the said committee, as in the said

first count set forth; that is to say, that having made the following statement to the said Thomas W. Cunningham,

"The Chairman: Very well, the next question which was asked you was as follows (continuing reading):

The Chairman: Where did you get this $25,000 you say you gave Mr. Watson?

Mr. Cunningham: I refuse to answer that question, I think that is personal."

The said Honorable James A. Reed then and there said to the said Thomas W. Cunningham:

"I now ask you, on behalf of the committee, the same question, and await your answer."

The said Honorable James A. Reed thereby meaning and intending, as the said Thomas W. Cunningham then and there well knew and understood, to elicit from him the said Thomas W. Cunningham, an answer at that time and place to a question which had been asked him on another occasion, and certain facts which then and there were within the knowledge of the said Thomas W. Cunningham, touching upon said alleged fraudulent, and corrupt, and unlawful practices in connection with the nomination and election of candidates for the office of member of the Senate of the United States and the ascertainment and determination of facts in connection with the nomination and alleged election of the said William S. Vare as a member of the Senate of the United States from the State of Pennsylvania, and with particular reference to the ascertainment and determination of the amount and source of all moneys and other things of value contributed and donated by the said Thomas W. Cunningham for expenditure and for other use in connection with the nomination and alleged election of the said William S. Vare; and that the said Thomas W. Cunningham then and there unlawfully did refuse to answer the said question then so propounded to him by the said Honorable James A. Reed; against

the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

THIRD COUNT:

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

That, to wit, on the said twenty-first day of February, in the year of our Lord one thousand nine hundred and twenty-seven, and at and in the District of Columbia aforesaid, and under the circumstances and conditions and upon the occasion mentioned in the first count of this indictment, the allegations concerning which, in said first count contained, are incorporated in this court by reference as fully and completely as if they were here repeated, and while the matters and questions referred to and set forth in, said first count of this indictment, were matters and questions under inquiry before the said committee and Senate, the said Thomas W. Cunningham, as in the said first count set forth, having been duly served with a subpœna issued by direction of the said committee, and summoned by authority of the Senate of the United States, to appear before the said committee and to give testimony before the said committee, and having appeared before the said committee, as such witness in obedience to the said subpœna and having been then and there duly sworn, a certain other question was propounded to the said Thomas W. Cunningham, by the said Honorable James A. Reed, a member and the chairman of the said committee, for said committee, which question, as the said Thomas W. Cunningham then and there well knew, was a question of pertinence to said matters and questions then under inquiry before the said committee, as in the said first count set forth: that is to say, that having made the following statement to the said Thomas W. Cunningham,

"The Chairman: The next question that was asked you as follows (continuing reading):

The Chairman: Where were you keeping the $25,000 before you gave it to Mr. Watson?

Mr. Cunningham: That is another personal question, Senator. I refuse to answer it."

the said Honorable James A. Reed then and there said to the said Thomas W. Cunningham,

"'I now ask you the same question, that is, where were you keeping this $25,000 before you gave it to Mr. Watson?'"

the said Honorable James A. Reed thereby meaning and intending, as the said Thomas W. Cunningham then and there well knew and understood, to elicit from him the said Thomas W. Cunningham, an answer at that time and place to a question which had been asked him on another occasion, and certain facts which then and there were within the knowledge of the said Thomas W. Cunningham, touching upon said alleged fraudulent, and corrupt, and unlawful practices in connection with the nomination and election of candidates for the office of member of the Senate of the United States, and the ascertainment and determination of facts in connection with the nomination and alleged election of the said William S. Vare as a member of the Senate of the United States from the State of Pennsylvania, and with particular reference to the ascertainment and determination of the amount and source of all moneys and other things of value contributed and donated by the said Thomas W. Cunningham for expenditure and for other use in connection with the nomination and alleged election of the said William S. Vare; and that the said Thomas W. Cunningham then and there unlawfully did refuse to answer the said question then so propounded to him by the said Honorable James A. Reed; against the peace and dignity of the United States, and con-

trary to the form of the statute of the same in such case made and provided.

FOURTH COUNT:

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

That, to wit, on the said Twenty-first day of February, in the year of our Lord one thousand nine hundred and twenty-seven, and at and in the District of Columbia aforesaid, and under the circumstances and conditions and upon the occasion mentioned in the first count of this indictment, the allegations concerning which, in said first count contained, are incorporated in this count by reference as fully and completely as if they were here repeated, and while the matters and questions referred to and set forth, in said first count of this indictment, were matters and questions under inquiry before the said committee and Senate, the said Thomas W. Cunningham, as in the said fourth count set forth, having been duly served with a subpœna issued by direction of the said committee, and summoned by authority of the Senate of the United States, to appear before the said committee and to give testimony before the said committee, and having appeared before the said committee as such witness, in obedience to the said subpœna and having been then and there duly sworn, a certain other question was propounded to the said Thomas W. Cunningham, by the said Honorable James A. Reed, a member and the chairman of the said committee, for said committee, which question, as the said Thomas W. Cunningham then and there well knew, was a question pertinent to said matters and questions then under inquiry before the said committee, as in the said first count set forth; that is to say, that having made the following statement to the said Thomas W. Cunningham,

"The Chairman: Very well, you were asked a number of questions, which I will read for the context (continuing reading):

The Chairman: Did you give this money to Mr. Watson in cash or by check.

Mr. Cunningham: I gave it to him as cash.

The Chairman: Where were you when you gave it to him?

Mr. Cunningham: I took it down to his headquarters at the Walton Hotel on the 10th day of April.

The Chairman: Did you have it in your pocket when you gave it to him—before you gave it to him?

Mr. Cunningham: Yes, sir.

The Chairman: Where did you get it from to put in your pocket?

Mr. Cunningham: That is a personal question, and I decline to answer it."

The said Honorable James A. Reed then and there said to the said Thomas W. Cunningham,

"I now ask you again, where did you get it? That is, where did you get this money from to put in your pocket?"

the said Honorable James A. Reed thereby meaning and intending, as the said Thomas W. Cunningham then and there well knew and understood, to elicit from him, the said Thomas W. Cunningham, an answer at that time and place to a question which had been asked him on another occasion, and certain facts which then and there were within the knowledge of the said Thomas W. Cunningham, touching upon said alleged fraudulent and corrupt, and unlawful practices in connection with the nomination and election of candidates for the office of member of the Senate of the United States, and the ascertainment and determination of facts in connection with the nomination and alleged election of the said William S. Vare as a member of the Senate of the United States from the State of Pennsylvania, and with

particular reference to the ascertainment and determination of the amount and source of all moneys and other things of value contributed and donated by the said Thomas W. Cunningham for expenditure and other use in connection with the nomination and alleged election of the said William S. Vare; and that the said Thomas W. Cunningham then and there unlawfully did refuse to answer the said question then so propounded to him by the said Honorable James A. Reed; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

FIFTH COUNT:

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That, to wit, on the said twenty-first day of February, in the year of our Lord one thousand nine hundred and twenty-seven, and at and in the District of Columbia aforesaid, and under the circumstances and conditions and upon the occasion mentioned in the first count of this indictment, the allegations concerning which, in said first count contained, are incorporated in this count by reference as fully and completely as if they were here repeated, and while the matters and questions referred to and set forth, in said first count of this indictment, were matters and questions under inquiry before the said committee and Senate, the said Thomas W. Cunningham, as in the said first count set forth, having been duly served with a subpœna issued by direction of the said committee, and summoned by authority of the Senate of the United States, to appear before the said committee and to give testimony before the said committee, and having appeared before the said committee as such witness, in obedience to the said subpœna and having been then and there duly sworn, a certain other question was propounded to the said

Thomas W. Cunningham, by the said Honorable James A. Reed a member and the chairman of the said committee, for said committee, which question, as the said Thomas W. Cunningham then and there well knew, was a question pertinent to said matters and questions then under inquiry before the said committee, as in the said first count set forth; that is to say, that having made the following statement to the said Thomas W. Cunningham,

"The Chairman: Very well. The next question asked you was (continuing reading):

The Chairman: Mr. Cunningham, how long had you had this money in your possession?

Mr. Cunningham: That is another personal question, and I decline to answer it. It was my own money, and I do not think I should tell the public where I kept it and how I got it, or anything else about it."

the said Honorable James A. Reed then and there said to the said Thomas W. Cunningham,

"I now ask you, how long had you had this money in your possession?"

the said Honorable James A. Reed thereby meaning and intending, as the said Thomas W. Cunningham then and there well knew and understood, to elicit from him, the said Thomas W. Cunningham, an answer at that time and place to a question which had been asked him on another occasion, and certain facts which then and there were within the knowledge of the said Thomas W. Cunningham, touching upon said alleged fraudulent, and corrupt, and unlawful practices in connection with the nomination and election of candidates for the office of member of the Senate of the United States, and the ascertainment and determination of facts in connection with the nomination and alleged election of the said William S. Vare, as a member of the Senate of the United States from the State of Pennsylvania, and with particular reference to the ascertainment and determi-

nation of the amount and source of all moneys and other things of value contributed and donated by the said Thomas W. Cunningham for expenditure and for other use in connection with the nomination and alleged election of the said William S. Vare; and that the said Thomas W. Cunningham then and there unlawfully did refuse to answer the said question then so propounded to him by the said Honorable James A. Reed; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

SIXTH COUNT:

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That, to wit, on the said twenty-first day of February, in the year of our Lord one thousand nine hundred and twenty-seven, and at and in the District of Columbia aforesaid, and under the circumstances and conditions and upon the occasion mentioned in the first count of this indictment, the allegations concerning which, in said first count contained, are incorporated in this count by reference as fully and completely as if they were here repeated, and while the matters and questions referred to and set forth, in the said first count of this indictment, were matters and questions under inquiry before the said committee and Senate, the said Thomas W. Cunningham, as in the said first count set forth, having been duly served with a subpœna issued by direction of the said committee, and summoned by authority of the Senate of the United States, to appear before the said Committee, and to give testimony before the said committee, and having appeared before the said committee as such witness, in obedience to the said subpœna and having been then and there duly sworn, a certain other question was propounded to the said Thomas W. Cunningham, by the said Honorable James

A. Reed, a member and the chairman of the said committee, for said committee, which question, as the said Thomas W. Cunningham then and there well knew, was a question pertinent to said matters and questions then under inquiry before the said committee, as in the said first count set forth; that is to say, that having made the following statement to the said Thomas W. Cunningham,

"The Chairman: You were then asked questions touching your salary, and after that, this question (reading):

The Chairman: Was this money which you refer to as the $25,000 that you gave to Watson, savings from your salary?

Mr. Cunningham: That is another personal question. I cannot answer that."

the said Honorable James A. Reed then and there said to the said Thomas W. Cunningham,

"I now ask you again, with this $25,000 which you refer to as the $25,000 that you gave to Watson, savings from your salary?"

the said Honorable James A. Reed thereby meaning and intending, as the said Thomas W. Cunningham then and there well knew and understood, to elicit from him, the said Thomas W. Cunningham, an answer at that time and place to a question which had been asked him on another occasion, and certain facts which then and there were within the knowledge of the said Thomas W. Cunningham, touching upon said alleged fraudulent, and corrupt, and unlawful practices in connection with the nomination and election of candidates for the office of member of the Senate of the United States and the ascertainment and determination of facts in connection with the nomination and alleged election of the said William S. Vare as a member of the Senate of the United States from the State of Pennsylvania, and with

particular reference to the ascertainment and determination of the amount and source of all moneys and other things of value contributed and donated by the said Thomas W. Cunningham for expenditure and for other use in connection with the nomination and alleged election of the said William S. Vare; and that the said Thomas W. Cunningham then and there unlawfully did refuse to answer the said question then so propounded to him by the said Honorable James A. Reed; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

Leo A. Rover,
Attorney of the United States in
and for the District of Columbia.

Orig.

Criminal No. 46931.
United States
vs.
Thomas W. Cunningham

Violation of Section 102 of the Revised Statutes.

Witnesses:
James F. Sellers
Hicklin Yeates

Filed in Open Court
Apr. 20, 1928,
Frank E. Cunningham, Clerk

A True Bill:
Martin R. West
Foreman.

AUTHENTICATION.

SUPREME COURT OF THE DISTRICT OF COLUMBIA.

I, Frank E. Cunningham, Clerk of the said Court, do hereby certify that the copy of indictment, annexed to this certificate, is a true copy of the original on file and of record in said offices, and that said original indictment is pending in said Court.

Witness my hand and the seal of said Court, this 28th day of April, 1928.

Frank E. Cunningham, Clerk.

I, F. L. Siddon, Presiding Justice of said court, do certify the foregoing attestation by Frank E. Cunningham, Clerk of the said court, to be in due form.

Witness my hand and seal this 28th day of April, 1928.

(Signed) F. L. Siddon,
Presiding Justice.

I, Frank E. Cunningham, Clerk of the said court, hereby certify that the Honorable F. L. Siddons, whose genuine signature is snbscribed to the foregoing certificate, was, at the time of signing and attesting the same Presiding Justice of said Court, duly commissioned and qualified.

Witness my hand and the seal of said Court, this 28th day of April, 1928.

(Signed)
Frank E. Cunningham, Clerk.

"Copy of Indictment from
The Supreme Court of the District of Columbia.

Criminal No. 46931

United States

vs.

Thomas W. Cunningham."

ORDER ALLOWING WRIT OF HABEAS CORPUS.

Writ allowed, returnable forthwith and hearing fixed December 23, 1930.

(Sgd.) O. B. Dickinson,
Judge.

WRIT OF HABEAS CORPUS.

(Issued December 23, 1930.)

UNITED STATES,
EASTERN DISTRICT OF PENNSYLVANIA, } *Sct.:*

THE PRESIDENT OF THE UNITED STATES,

To Walter C. Fetters, United States Marshal,

GREETING:

We command you, that the body of THOMAS W. CUNNINGHAM, who is under your custody, as it is said, detained by whatsoever names the said THOMAS W. CUNNINGHAM may be detained, together with the day and cause of being taken and detained, you have before the HONORABLE OLIVER B. DICKINSON, Judge of the District Court of the United States in and for the Eastern District of Pennsylvania, at the Room of the District Court of the United States, in the City of Philadelphia, immediately, then and there to do, submit to and receive whatsoever the said Judge shall then and there consider in that behalf; and have you then there this writ.

WITNESS the Honorable the Judges of said Court at Philadelphia, this twenty-third day of December, A. D. 1930, and in the one hundred and fifty-fifth year of the Independence of the said United States.

GEORGE BRODBECK,
Clerk U. S. District Court,
Eastern District of Pennsylvania.

By (Sgd.) E. G. JOHNSON,
Deputy Clerk.

Service of the within writ accepted and acknowledged this twenty-third day of December, 1930.

(Sgd.) WALTER C. FETTERS,
United States Marshal,
By (Sgd.) CHAS. P. MALLON,
Deputy Marshal.

RETURN ENDORSED ON WRIT.
(Filed December 24, 1930.)

As commanded by the within writ of habeas corpus, I have this twenty-third day of December, A. D. 1930, the body of the relator, THOMAS W. CUNNINGHAM, here in court and hold him pending decision of the Court.

So answers

WALTER C. FETTERS,
United States Marshal,
Per (Sgd.) CHARLES P. MALLON,
Deputy.

RETURN TO WRIT OF HABEAS CORPUS.
(Filed December 23, 1930.)

Walter C. Fetters, being duly sworn, deposes and says that he is the Marshal of the United States for the Eastern District of Pennsylvania, and on his oath makes this return to the writ of habeas corpus issued herein on the twenty-third day of December, 1930, producing in court the body of Thomas W. Cunningham mentioned in the said writ, and for a further return to said writ deposes as follows:

1. Deponent admits the allegations of paragraph "1" of the petition of said Cunningham.

2. Deponent admits that said Cunningham is actually restrained of his liberty and detained by him, but denies that the restraint and detention are unjust and unlawful. On the twenty-third day of December, 1930, immediately prior to the service of the writ of habeas corpus upon him, deponent had taken custody of said Thomas W. Cunningham by virtue of a warrant of removal and the other proceedings hereinafter referred to and was about to execute said warrant of removal by removing said Thomas W. Cunningham to the District of Columbia in order there to deliver him to the Marshal of the said District of Columbia pursuant to said warrant of removal. A copy of said warrant of removal is annexed hereto, marked Exhibit "A," and is hereby made a part hereof. The said warrant of removal was issued as a result of certain proceedings before the Honorable Oliver B. Dickinson, a correct record of which proceedings, with certain proceedings subsequent thereto, all consisting of sixty-eight pages, is annexed hereto, marked Exhibit "B," and is hereby made a part hereof. The said Thomas W. Cunningham on May 10, 1928, filed in the District Court of the United States for the Eastern District of Pennsylvania a petition for a writ of habeas corpus to obtain his discharge from custody of W. Frank Mathues, then United States Marshal for the Eastern District of Pennsylvania. Said District Court entered a decree dismissing said petition, but the Circuit Court of Appeals for the Third Circuit reversed this decree and remanded the cause to the District Court with instructions to discharge said Thomas W. Cunningham. The Supreme Court of the United States granted a writ of certiorari to the Circuit Court of Appeals for the Third Circuit in this matter and thereafter vacated said judgments of

the United States Circuit Court of Appeals for the Third Circuit and of the United States District Court for the Eastern District of Pennsylvania and remanded the cause to said District Court with directions to dismiss the proceeding for writ of habeas corpus against said W. Frank Mathues, as abated. Said District Court has dismissed said proceeding against W. Frank Mathues for writ of habeas corpus, as abated.

3. Deponent admits the allegations contained in paragraph of said petition marked "3," but for greater certainty refers to the copy of the affidavit which appears in Exhibit "B," annexed hereto.

4. Upon information and belief deponent denies the allegations of the paragraph of said petition marked "4," and refers to the copy of the indictment which appears in Exhibit "B" annexed hereto.

5. Upon information and belief deponent denies the allegations of the paragraph of said petition marked "5," and refers to the copy of said indictment which appears in Exhibit "B" annexed hereto.

The sources of your deponent's information and the grounds of his belief as to the facts hereinbefore alleged are the warrant, marked Exhibit "A," annexed hereto, and the proceedings, marked Exhibit "B," annexed hereto.

WHEREFORE, deponent prays that the writ of habeas corpus herein may be dismissed and that the said Thomas W. Cunningham be remanded to the custody of the respondent to be dealt with according to law.

(Sgd.) WALTER C. FETTERS,
United States Marshal,
Eastern District of Pennsylvania.

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF PENNSYLVANIA, } *ss.:*

Walter C. Fetters, being duly sworn according to law, deposes and says that he is the United States Marshal for the Eastern District of Pennsylvania; that he makes the foregoing return to the writ of habeas corpus in the above-entitled case; and that the facts set forth in the said return are true to the best of his information, knowledge and belief.

(Sgd.) WALTER C. FETTERS.

Sworn to and subscribed before me this twenty-third day of December, 1930.

(Sgd.) THEODORE L. COBAUGH,
Deputy Clerk, U. S. D. C.,
Eastern District of Pennsylvania.

EXHIBIT "A."

THE UNITED STATES OF AMERICA
EASTERN DISTRICT OF PENNSYLVANIA } Sct. 113 of 1928.

THE PRESIDENT OF THE UNITED STATES OF AMERICA
To the Marshal of the Eastern District of Pennsylvania,

GREETINGS:

WHEREAS Thomas W. Cunningham has been brought before me upon a commitment made by me, a District Judge sitting as a Committing Magistrate for the purpose of obtaining a warrant for the removal of the said THOMAS W. CUNNINGHAM to the District of Columbia in which District the offense for which said prisoner has been so committed is to be tried, the copy of which commitment returned by the United States

Marshal, as also all other proceedings, are hereto annexed:

And Whereas the United States District Attorney for the Eastern District of Pennsylvania has made application to me, under the provisions of the statutes of the United States in the behalf provided, for a warrant for the removal of the said prisoner to the said District of Columbia and an examination into the matter having been made by me:

Now, Therefore, You Are Hereby Commanded, in the name of the President of the United States of America, to remove the said prisoner now in your custody forthwith to the said District of Columbia and there deliver him to the Marshal of the said District of Columbia or some other proper officer authorized to receive the said prisoner, in order that he may be dealt with according to law, and make return what you shall have done, together with this writ, to the Clerk of the Supreme Court of the District of Columbia.

Given under my hand and the seal of the District Court of the United States for the Eastern District of Pennsylvania, at the
(Seal) city of Philadelphia, this 10th day of May, A. D. 1928, and in the One Hundred and Fifty-Second year of the Independence of the United States.

(Sgd.) Oliver B. Dickinson
Judge of the District Court.

Attest:

(Sgd.) George Brodbeck
Clerk District Court.

EXHIBIT "B."

TRANSCRIPT OF RECORD.

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE THIRD CIRCUIT.

No. 3857. October Term, 1928.

UNITED STATES OF AMERICA EX REL.
THOMAS W. CUNNINGHAM,
Appellant,

vs.

W. FRANK MATHUES, United States
Marshal,
Appellee.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

No. M-140.

UNITED STATES ex rel. THOMAS W. CUNNINGHAM	Golder; Felger & Lemisch
vs.	
W. FRANK MATHUES, U. S. MARSHAL, E. D. of Pa.	George W. Coles

DOCKET ENTRIES.

May	10, 1928.	Petition for Writ of Habeas Corpus filed.
"	10, "	Order of Court dismissing Petition for Writ of Habeas Corpus filed.
"	10, "	Order of Court enlarging Relator on bail in $1000.00 filed.
"	10, "	Petition for Appeal with supersedeas and Order of Court granting prayer of petition filed.
"	10, "	Assignments of Error filed.
"	10, "	Bond of Relator with surety in $1,000. filed.
"	10, "	Citation allowed and issued.
"	10, "	Citation returned: "service accepted" and filed.
"	14, "	Copy of Notice of Appeal filed.
"	17, "	Testimony filed.
"	17, "	Præcipe as to transcript of record sur appeal filed.

COURT OF UNITED STATES COMMISSIONER,
EASTERN DISTRICT OF PENNSYLVANIA.

Commissioners' Return No. 113 of 1928.
Section.
Penal Code.

UNITED STATES OF AMERICA

vs.

THOMAS W. CUNNINGHAM.

AFFIDAVIT FOR WARRANT OF ARREST.

S. Busha, being duly sworn according to law, deposes and says upon knowledge, information, and belief, that on February 21, 1927, at Washington in the District of Columbia
did knowingly, wilfully, and unlawfully fail, neglect and refuse to answer certain questions propounded to him during his attendance before a committee of the Senate of the United States as a witness who had been summoned to give testimony upon a matter then under inquiry before said committee, and questions being pertinent to the matter then under inquiry before said committee.

In violation of Section 102 of the Revised Statutes of the United States, and against the peace and dignity of the said United States.

This deponent bases his knowledge, information and belief upon an indictment found by a Grand Jury of the United States of America in and for the District of Columbia, a duly certified copy of said indictment being hereto attached and made part hereof.

(S.) S. BUSHA.

Sworn to and subscribed before me at Philadelphia, this 26th day of April, 1928.

(S.) O. B. DICKINSON,
United States District Judge,
Eastern District of Pennsylvania.

WARRANT.

THE PRESIDENT OF THE UNITED STATES OF AMERICA,

To the United States Marshal for the Eastern District of Pennsylvania:

WHEREAS, the above affidavit has been made in writing before me, a United States District Judge for the Eastern District of Pennsylvania; that on February 21, 1927, at Washington, in the District of Columbia, Thomas W. Cunningham, hereinafter called the defendant, did knowingly, willfully, and unlawfully violate the statutes of the United States in manner and form as above set forth.

NOW, THEREFORE, You are hereby commanded to apprehend the said defendant, and bring the body forthwith before me, to answer the said complaint, that he may then and there be dealt with according to law.

Given under my hand and seal at Philadelphia, this 26th day of April, 1928.

(S.) O. B. DICKINSON,
United States District Judge,
Eastern District of Pennsylvania.

RETURN OF WARRANT.

Received this warrant on the 26th day of April, 1928, at Philadelphia, and executed the same by arresting the within-named defendant, at Philadelphia, on the 4 day of May, 1928, and have the body now in court as within I am commanded.

(S.) W. FRANK MATHUES,
United States Marshal,
Eastern District of Pennsylvania.
By (S.) CHAS. P. MALLON,
Deputy.

GOVERNMENT'S EVIDENCE AT THE HEARING, MAY 4, 1928.

Philadelphia, Pa., May 4th, 1928.

Before HON. OLIVER B. DICKINSON, *Judge.*

Present:

HOWARD BENTON LEWIS, ESQ., Assistant United States Attorney, for the Government.

HON. BENJAMIN M. GOLDER, and RUBY R. VALE, ESQ., for Defendant.

MR. LEWIS: May it please the Court, this is an application by the Government for a warrant of removal, to remand the defendant for trial. The defendant was indicted on April 20th, by a United States

Grand Jury, in the District of Columbia, charged with a misdemeanor, under Section 102 of the Penal Code, in that on February 21, 1927, at Washington, at a hearing of the Senate Committee before whom he had been summoned as a witness to testify, defendant refused to answer certain questions pertinent to the inquiry then pending before the Committee.

Upon a certified copy of the indictment being sent on to this jurisdiction, a warrant of arrest was issued directly out of this court under Section 1014 of the Revised Statutes.

THE COURT: Have you that section there?

MR. LEWIS: Yes. I shall read it in just a moment. On that warrant the defendant is in Court this morning, in custody of the Marshal.

In support of the application, the Government offers, first, the admission by the defendant—

THE COURT: (Interrupting) Before you go into that, Mr. District Attorney, I would like to get what it is we are on, straightened out in my mind. You have referred to it as an order of removal. What have we to do with that, now? As I understood you, you asked the Court to sit as a Committing Magistrate in lieu of taking the case before a Commissioner. Are not we hearing the case as upon the preliminary hearing, the same as a United States Commissioner would hear it, if it had taken that course?

MR. GOLDER: Yes.

(Informal discussion here ensued, off the record.)

THE COURT: Go ahead, we will hear the case.

MR. LEWIS: In support of the application of the Government, here this morning, it offers, first, the admission by the defendant that he is the same person

who refused to answer questions, and the same person that is named in the indictment.

Secondly, the Government offers the certified copy of the Indictment itself.

Copy of the document last above offered in evidence, reads as follows:

"IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

To all to whom these presents come, Greeting:

UNITED STATES OF AMERICA,
DISTRICT OF COLUMBIA, } *ss:*

BE IT REMEMBERED, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the time hereinafter mentioned, among others, was the following proceeding, to wit:

Filed in Open Court Apr. 20, 1928, Frank E. Cunningham, Clerk

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Criminal Term.

District of Columbia, ss: April Term, A. D. 1928.

The Grand Jurors of the United States of America, in and for the District of Columbia aforesaid, upon their oath, do present:

That for a considerable period of time prior to the date of the finding of this indictment, the Senate of the United States has been greatly concerned and disturbed, in connection with the nomination and election of candidates for the office of member of the said Senate of the United States, by the bringing to the attention of the said Senate of the United States of certain allegations and charges of fraudulent, and corrupt, and unlawful practices in connection with such nomina-

tion and election of candidates in several States for the said office; and that consequently the said Senate of the United States has been keenly interested in the matter of securing information and data to permit the ascertainment and determination of the truth or falsity of such allegations and charges, as aforesaid, and to enable the said Senate of the United States to ascertain and determine what, if any, other or additional legislation might be advisable upon the general subject of the nomination and election of candidates for the office of member of the said Senate of the United States; and that as a consequence of the making of such allegations and charges, and for the purposes and under the circumstances aforesaid, the Senate of the United States, on May 19, 1926, did adopt a certain resolution (S. Res. 195), that is to say, a resolution of the tenor following:

RESOLVED, that a special committee of five, consisting of three members selected from the majority political party, of whom one shall be a progressive republican, and of two members from the minority political party, shall be forthwith appointed by the President of the Senate; and said committee is hereby authorized and instructed immediately to investigate what moneys, emoluments, rewards, or things of value, including agreements of understandings of support for appointment or election to office have been promised, contributed, made or expended, or shall hereafter be promised, contributed, expended, or made by any person, firm, corporation, or committee, organization, or association, to influence the nomination of any person as a candidate of any political party or organization for membership in the United States Senate or to contribute to or promote the election of any person as a member of the United States Senate at the general election to he held in November, 1926. Said committee shall report the names of the persons, firms, or corporations, or committees, organizations, or associations that have made or shall hereafter

make such promises, subscriptions, advancements, or payments and the amount by them severally contributed or promised as aforesaid; including the method of expenditure of said sums or the method of performance of said agreements, together with all facts in relation thereto.

Said committee is hereby empowered to sit and act at such time or times and at such place or places as it may deem necessary; to require subpœna or otherwise the attendance of witnesses, the production of books, papers, and documents, and to do such other acts as may be necessary in the matter of said investigation.

The chairman of the committee or any member thereof may administer oaths to witnesses. Every person who, having been summoned as a witness by authority of said committee wilfully makes default, or who, having appeared, refused to answer any question pertinent to the investigation heretofore authorized, shall be held to the penalties provided by Section 102 of the Revised Statutes of the United States.

Said committee shall promptly report to the Senate the facts by it ascertained.

And that on June 3, 1926, the Senate of the United States did adopt a certain other resolution (S. Res. 227), that is to say, a resolution of the tenor following:

RESOLVED, That the special Senate Committee created pursuant to Resolution 195, agreed to the 19th day of May, 1926, hereby is authorized to employ stenographic assistance, at a cost not exceeding 25 cents per hundred words, to report such hearings and proceedings as may be had in connection with any subject which may be before said committee and such clerical or other assistance as may be deemed necessary by the committee, that all expenses incurred, including costs of travel by the committee or their assistants, in furtherance of the purposes of said resolution, shall be paid out of the contigent fund of the

Senate upon vouchers properly approved. The costs of this investigation shall not exceed $10,000.

And that on June 30, 1926, the Senate of the United States did adopt a certain other resolution (S. Res. 258); that is to say, a resolution of the tenor following:

RESOLVED, That the limit of expenditure to be made under authority of Senate Resolution Numbered 227, agreed to June 3, 1926, be, and the same hereby is, increased from $10,000 to $50,000.

And that on January 11, 1927, the Senate of the United States did adopt a certain other resolution (S. Res. 324) that is to say, a resolution of the tenor following:

Whereas William B. Wilson, of the State of Pennsylvania, has presented his petition to the Senate of the United States contesting the election of William S. Vare as a Senator from Pennsylvania in the election held on the 2nd day of November, 1926; and

Whereas the said William B. Wilson charges in his petition fraudulent and unlawful practices in connection with the nomination and in connection with the alleged election of the said Vare as Senator of the State of Pennsylvania, and that unless preserved for the use of the Senate evidence relating to said charges and said election will be lost or destroyed; and

Whereas the special committee of five organized under Senate Resolution Number 195, Sixty-ninth Congress, first session by direction of the Senate has entered upon an investigation pertaining to alleged corrupt practices in the election held November 2, 1926, and in the primary proceeding it is the State of Pennsylvania; Therefore be it

RESOLVED, That the special committee of five constituted under Senate Resolution Number 195, Sixty-ninth Congress, first session, in addition to, and not in detraction from the powers conferred

in said resolution, be, and it is hereby, authorized and empowered:

(1) To take possession, in the presence of the said William S. Vare or his representative if the said William S. Vare desires to be present or to have a representative present, and preserve all ballot boxes and other containers of ballots, ballots, return sheets, voters' check lists, tally sheets, registration lists and other records, books and documents used in said senatorial election held in the State of Pennsylvania on the 2nd day of November, 1926.

(2) To take and preserve all evidence as to the various matters alleged in said petition, including any alleged fraud, irregularity, unlawful expenditure of money, and intimidation of voters or other acts or facts affecting the result of said election.

(3) That said committee is hereby vested with all powers of procedure with respect to the subject matter of this resolution that said committee possesses under Resolution Numbered 195, Sixty-ninth Congress, first session, with respect to the subject matter of that resolution.

(4) That the Sergeant at Arms of the Senate and his deputies are directed to attend the said special committee and to execute its directions. That the said special committee may appoint subcommittees of one or more members with power and authority to act for the full committee in taking possession of evidence and in the subpœnaing of witnesses and taking testimony.

RESOLVED FURTHER, That the expenses incurred in carrying out this resolution shall be paid from the contingent fund of the Senate upon vouchers ordered by the Committee or any subcommittee thereof and approved by the chairman of the committee, the cost of same not to exceed $15,000 in addition to the moneys heretofore authorized to be expended.

Whereupon, and by force and under authority of the aforesaid resolutions, the said special com-

mittee of five organized under Senate Resolution Number 195, Sixty-ninth Congress, first session, which said committee is hereafter referred to in this indictment as 'the said committee,' was empowered and directed to investigate the entire subject of the alleged fraudulent and corrupt and unlawful practices in connection with the nomination and election of candidates for the office of member of the Senate of the United States, with particular reference to the ascertainment and determination of facts in connection with the alleged election of the said William S. Vare as a member of the Senate of the United States from the State of Pennsylvania, including any alleged fraud, irregularity, unlawful expenditure of money, and intimidation of voters, or other acts or facts affecting the result of said election, and to report its findings and recommendations to the Senate with a view to enabling the Senate to ascertain and determine what, if any, other or additional legislation might be advisable in the premises; that the said committee did in fact thereupon proceed to exercise that authority and to make such investigation, for the purpose of making such report, findings and recommendations to the Senate, with a view of enabling the Senate to ascertain and determine what, if any, other or additional legislation might be advisable, and the matters so referred to the said committee then and there, to wit, at Washington in said District of Columbia, therefore came under inquiry before the said committee and the said committee, for that purpose and in that behalf, did hold sundry hearings at which witnesses were examined and documents produced.

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

That thereafter, to wit, on the twenty-first day of February, in the year of our Lord one thousand nine hundred and twenty-seven, and at and in the District of Columbia aforesaid, said matters and questions then and there still being matters and questions under inquiry before the said committee and Senate, it became and was a material matter

and question before the said committee to ascertain and determine the amount of the source of all moneys and other things of value contributed and donated by one Thomas W. Cunningham, for expenditure and for other use in connection with the nomination and in connection with the alleged election of the said William S. Vare as a member of the Senate of the United States from the State of Pennsylvania; and that the said Thomas W. Cunningham, on the said Twenty-first day of February, in the year of our Lord one thousand nine hundred and twenty-seven, and at and in the District of Columbia aforesaid, having been theretofore, to wit, on the fifteenth day of February, in the year of our Lord one thousand nine hundred and twenty-seven, duly served with a subpœna issued by direction of said committee by authority of the Senate of the United States, to appear before the said committee and to give testimony before the said committee, on said twenty-first day of February, in the year of our Lord one thousand nine hundred and twenty-seven, did appear before the said committee as such witness in obedience to such subpœna, and was then and there duly sworn; that thereupon the Honorable James A. Reed, a member and the chairman of the said committee, for said committee, propounded to the said Thomas W. Cunningham, a certain question which, as the said Thomas W. Cunningham then and there well knew, was a question pertinent to said matters and questions then and there under inquiry before the said committee as aforesaid; that is to say, that having made the following statement to the said Thomas W. Cunningham,

"The Chairman: Mr. Cunningham, the committee has called you before it the second time in order to permit you an opportunity to answer the questions you declined to answer before, and afford you the opportunity to answer such other questions as may be put to you. Mr. Cunningham on your previous examination you stated (reading):

I handed money to Thomas F. Watson $25,000 on the 10th day of April, 1926.

Then this follows, as shown by the record of the proceedings (reading):

The Chairman: Where did you get that money?

Mr. Cunningham: I got that money out of my own private funds.

The Chairman: How is that?

Mr. Cunningham: Out of my own private funds.

The Chairman: Your own private moneys?

Mr. Cunningham: Yes, sir; my own money; my own money.

The Chairman: How long had it been your own money?

Mr. Golder at that time stated an objection, which appears in the record.

The question was repeated as follows (reading):

The Chairman: How long had it been your own money?

Mr. Cunningham: I refuse to answer that question, Senator, as a personal question. It is my own private business,"

the said Honorable James A. Reed then and there said to said Thomas W. Cunningham,

"I now ask you the same question again, Mr. Cunningham", the said Honorable James A. Reed thereby meaning and intending, as the said Thomas W. Cunningham then and there well knew and understood, to elicit from him the said Thomas W. Cunningham, an answer at that time and place

to a question which had been asked him on another occasion, and certain facts which then and there were within the knowledge of the said Thomas W. Cunningham, touching upon said alleged fraudulent, and corrupt, and unlawful practices in connection with the nomination and election of candidates for the office of member of the Senate of the United States, and the ascertainment and determination of facts in connection

with the nomination and alleged election of the said William S. Vare as a member of the Senate of the United States for the State of Pennsylvania, and with particular reference to the ascertainment and determination of the amount and source of all moneys and other things of value contributed and donated by the said Thomas W. Cunningham for expenditure and for other use in connection with the nomination and alleged election of the said William S. Vare; and that the said Thomas W. Cunningham then and there unlawfully did refuse to answer the said question then so propounded to him by the said Honorable James A. Reed; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

SECOND COUNT:

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:
That, to wit, on the said twenty-first day of February in the year of our Lord one thousand nine hundred and twenty-seven, and at and in the District of Columbia aforesaid, and under the circumstances and conditions and upon the occasion mentioned in the first count of this indictment, the allegations concerning which, in said first count contained, are incorporated in this count by reference as fully and completely as if they were here repeated, and while the matters and questions referred to and set forth, in said first count of this indictment, were matters and questions under inquiry before the said committee and Senate, the said Thomas W. Cunningham, as in the said first count set forth, having been duly served with a subpœna issued by direction of the said committee, and summoned by authority of the Senate of the United States, to appear before the said committee and to give testimony before the said committee, and having appeared before the said committee as such witness, in obedience to the said subpœna and having been then and there

duly sworn, a certain other question was propounded to the said Thomas W. Cunningham, by the said Honorable James A. Reed, a member and the chairman of the said committee, for said committee, which question, as the said Thomas W. Cunningham then and there well knew, was a question pertinent to said matters and questions then under inquiry before the said committee, as in the said first count set forth; that is to say, that having made the following statement to the said Thomas W. Cunningham,

"The Chairman: Very well, the next question which was asked you was as follows (continuing reading):

The Chairman: Where did you get this $25,000 you say you gave to Mr. Watson?

Mr. Cunningham: I refuse to answer that question, I think that is personal."

The said Honorable James A. Reed then and there said to the said Thomas W. Cunningham:

"I now ask you, on behalf of the committee, the same question, and await your answer."

The said Honorable James A. Reed thereby meanby and intending, as the said Thomas W. Cunningham then and there well knew and understood, to elicit from him the said Thomas W. Cunningham, an answer at that time and place to a question which had been asked him on another occasion, and certain facts which then and there were within the knowledge of the said Thomas W. Cunningham, touching upon said alleged fraudulent, and corrupt, and unlawful practices in connection with the nomination and election of candidates for the office of member of the Senate of the United States, and the ascertainment and determination of facts in connection with the nomination and alleged election of the said William S. Vare as a member of the Senate of the United States from the State of Pennsylvania, and with particular reference to the ascertainment and determination of the amount and source of all moneys and other things of value contributed and donated by the said Thomas W. Cunningham for expenditure and for other use in connection with

the nomination and alleged election of the said William S. Vare; and that the said Thomas W. Cunningham then and there unlawfully did refuse to answer the said question then so propounded to him by the said Honorable James A. Reed; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

THIRD COUNT:

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

That, to wit, on the said twenty-first day of February, in the year of our Lord one thousand nine hundred and twenty-seven, and at and in the District of Columbia aforesaid, and under the circumstances and conditions and upon the occasion mentioned in the first count of this indictment, the allegations concerning which, in said first count contained, are incorporated in this court by reference as fully and completely as if they were here repeated, and while the matters and questions referred to and set forth in, said first count of this indictment, were matters and questions under inquiry before the said committee and Senate, the said Thomas W. Cunningham, as in the said first count set forth, having been duly served with a subpœna issued by direction of the said committee, and summoned by authority of the Senate of the United States, to appear before the said committee and to give testimony before the said committee, and having appeared before the said committee as such witness in obedience to the said subpœna and having been then and there duly sworn, a certain other question was propounded to the said Thomas W. Cunningham, by the said Honorable James A. Reed, a member and the chairman of the said committee, for said committee, which question, as the said Thomas W. Cunningham then and there well knew, was a question of pertinence to said matters and questions then under inquiry before the said committee, as in the said first count set forth: that is to say, that having

made the following statement to the said Thomas W. Cunningham,

"The Chairman: The next question that was asked you as follows (continuing reading):

The Chairman: Where were you keeping the $25,000 before you gave it to Mr. Watson?

Mr. Cunningham: That is another personal question, Senator. I refuse to answer it."

the said Honorable James A. Reed then and there said to the said Thomas W. Cunningham,

"I now ask you the same question, that is, where were you keeping this $25,000 before you gave it to Mr. Watson?"

the said Honorable James A. Reed thereby meaning and intending, as the said Thomas W. Cunningham then and there well knew and understood, to elicit from him, the said Thomas W. Cunningham, an answer at that time and place to a question which had been asked him on another occasion, and certain facts which then and there were within the knowledge of the said Thomas W. Cunningham, touching upon said alleged fraudulent, and corrupt, and unlawful practices in connection with the nomination and election of candidates for the office of member of the Senate of the United States, and the ascertainment and determination of facts in connection with the nomination and alleged election of the said William S. Vare as a member of the Senate of the United States from the State of Pennsylvania, and with particular reference to the ascertainment and determination of the amount and source of all moneys and other things of value contributed and donated by the said Thomas W. Cunningham for expenditure and for other use in connection with the nomination and alleged election of the said William S. Vare; and that the said Thomas W. Cunningham then and there unlawfully did refuse to answer the said question then so propounded to him by the said Honorable James A. Reed; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

FOURTH COUNT:

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

That, to wit, on the said Twenty-first day of February, in the year of Our Lord one thousand nine hundred and twenty-seven, and at and in the District of Columbia aforesaid, and under the circumstances and conditions and upon the occasion mentioned in the first count of this indictment, the allegations concerning which, in said first count contained, are incorporated in this count by reference as fully and completely as if they were here repeated, and while the matters and questions referred to and set forth, in said first count of this indictment, were matters and questions under inquiry before the said committee and Senate, the said Thomas W. Cunningham, as in the said fourth count set forth, having been duly served with a subpœna issued by direction of the said committee, and summoned by authority of the Senate of the United States, to appear before the said committee and to give testimony before the said committee, and having appeared before the said committee as such witness, in obedience to the said subpœna and having been then and there duly sworn, a certain other question was propounded to the said Thomas W. Cunningham, by the said Honorable James A. Reed, a member and the chairman of the said committee, for said committee, which question, as the said Thomas W. Cunningham then and there well knew, was a question pertinent to said matters and questions then under inquiry before the said committee, as in the said first count set forth; that is to say, that having made the following statement to the said Thomas W. Cunningham,

"The Chairman: Very well, you were asked a number of questions, which I will read for the context (continued reading):

The Chairman: Did you give this money to Mr. Watson in cash or by check.

Mr. Cunningham: I gave it to him as cash.

The Chairman: Where were you when you gave it to him?

Mr. Cunningham: I took it down to his headquarters at the Walton Hotel on the 10th day of April.

The Chairman: Did you have it in your pocket when you gave it to him—before you gave it to him?

Mr. Cunningham: Yes, sir.

The Chairman: Where did you get it from to put in your pocket?

Mr. Cunningham: That is a personal question, and I decline to answer it."

The said Honorable James A. Reed then and there said to the said Thomas W. Cunningham,

"I now ask you again, where did you get it? That is, where did you get this money from to put in your pocket?"

the said Honorable James A. Reed thereby meaning and intending, as the said Thomas W. Cunningham then and there well knew and understood, to elicit from him, the said Thomas W. Cunningham, an answer at that time and place to a question which had been asked him on another occasion, and certain facts which then and there were within the knowledge of the said Thomas W. Cunningham, touching upon said alleged fraudulent and corrupt, and unlawful practices in connection with the nomination and election of candidates for the office of member of the Senate of the United States, and the ascertainment and determination of facts in connection with the nomination and alleged election of the said William S. Vare as a member of the Senate of the United States from the State of Pennsylvania, and with particular reference to the ascertainment and determination of the amount and source of all moneys and other things of value contributed and donated by the said Thomas W. Cunningham for expenditure and for other use in connection with the nomination and alleged election of the said William S. Vare; and that the said Thomas W. Cunningham then and there unlawfully did refuse to answer the said question then so propounded to him by the said Honorable

James A. Reed; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

FIFTH COUNT:

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That, to wit, on the said twenty-first day of February, in the year of our Lord one thousand nine hundred and twenty-seven, and at and in the District of Columbia aforesaid, and under the circumstances and conditions and upon the occasion mentioned in the first count of this indictment, the allegations concerning which, in said first count contained, are incorporated in this count by reference as fully and completely as if they were here repeated, and while the matters and questions referred to and set forth, in said first count of this indictment, were matters and questions under inquiry before the said committee and Senate, the said Thomas W. Cunningham, as in the said first count set forth, having been duly served with a subpœna issued by direction of the said committee, and summoned by authority of the Senate of the United States, to appear before the said committee and to give testimony before the said committee, and having appeared before the said committee as such witness, in obedience to the said subpœna and having been then and there duly sworn, a certain other question was propounded to the said Thomas W. Cunningham, by the said Honorable James A. Reed a member and the chairman of the said committee, for said committee, which question, as the said Thomas W. Cunningham then and there well knew, was a question pertinent to said matters and questions then under inquiry before the said committee, as in the said first count set forth; that is to say, that having made the following statement to the said Thomas W. Cunningham,

"The Chairman: Very well. The next question asked you was (continuing reading):

The Chairman: Mr. Cunningham, how long had you had this money in your possession?

Mr. Cunningham: That is another personal question, and I decline to answer it. It was my own money, and I do not think I should tell the public where I kept it and how I got it, or anything else about it."

the said Honorable James A. Reed then and there said to the said Thomas W. Cunningham,

"I now ask you, how long had you had this money in your possession?"

the said Honorable James A. Reed thereby meaning and intending, as the said Thomas W. Cunningham then and there well knew and understood, to elicit from him, the said Thomas W. Cunningham, an answer at that time and place to a question which had been asked him on another occasion, and certain facts which then and there were within the knowledge of the said Thomas W. Cunningham, touching upon said alleged fraudulent, and corrupt, and unlawful practices in connection with the nomination and election of candidates for the office of member of the Senate of the United States, and the ascertainment and determination of facts in connection with the nomination and alleged election of the said William S. Vare, as a member of the Senate of the United States from the State of Pennsylvania, and with particular reference to the ascertainment and determination of the amount and source of all moneys and other things of value contributed and donated by the said Thomas W. Cunningham for expenditure and for other use in connection with the nomination and alleged election of the said William S. Vare; and that the said Thomas W. Cunningham then and there unlawfully did refuse to answer the said question then so propounded to him by the said Honorable James A. Reed; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

SIXTH COUNT:

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That, to wit, on the said twenty-first day of February, in the year of our Lord one thousand nine hundred and twenty-seven, and at and in the district of Columbia aforesaid, and under the circumstances and conditions and upon the occasion mentioned in the first count of this indictment, the allegations concerning which, in said first count contained, are incorporated in this count by reference as fully and completely as if they were here repeated, and while the matters and questions referred to and set forth, in said first count of this indictment, were matters and questions under inquiry before the said committee and Senate, the said Thomas W. Cunningham, as in the said first count set forth, having been duly served with a subpœna issued by direction of the said committee, and summoned by authority of the Senate of the United States, to appear before the said Committee, and to give testimony before the said committee, and having appeared before the said committee as such witness, in obedience to the said subpœna and having been then and there duly sworn, a certain other question was propounded to the said Thomas W. Cunningham, by the said Honorable James A. Reed, a member and the chairman of the said committee, for said committee, which question, as the said Thomas W. Cunningham then and there well knew, was a question pertinent to said matters and questions then under inquiry before the said committee, as in the said first count set forth; that is to say, that having made the following statement to the said Thomas W. Cunningham,

"The Chairman: You were then asked questions touching your salary, and after that, this question (reading):

The Chairman: Was this money which you refer to as the $25,000 that you gave to Watson, savings from your salary?

Mr. Cunningham: That is another personal question. I cannot answer that."

the said Honorable James A. Reed then and there said to the said Thomas W. Cunningham,

"I now ask you again, with this $25,000 which you refer to as the $25,000 that you gave to Watson, savings from your salary?"

the said Honorable James A. Reed thereby meaning and intending, as the said Thomas W. Cunningham then and there well knew and understood, to elicit from him, the said Thomas W. Cunningham, an answer at that time and place to a question which had been asked him on another occasion, and certain facts which then and there were within the knowledge of the said Thomas W. Cunningham, touching upon said alleged fraudulent, and corrupt, and unlawful practices in connection with the nomination and election of candidates for the office of member of the Senate of the United States, and the ascertainment and determination of facts in connection with the nomination and alleged election of the said William S. Vare as a member of the Senate of the United States from the State of Pennsylvania, and with particular reference to the ascertainment and determination of the amount and source of all moneys and other things of value contributed and donated by the said Thomas W. Cunningham for expenditure and for other use in connection with the nomination and alleged election of the said William S. Vare; and that the said Thomas W. Cunningham then and there unlawfully did refuse to answer the said question then so propounded to him by the said Honorable James A. Reed; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

Leo A. Rover,
Attorney of the United States in and for the District of Columbia.

Orig.

Criminal No. 46931.

UNITED STATES

vs.

THOMAS W. CUNNINGHAM

Violation of Section 102 of the Revised Statutes.

Witnesses:

James F. Sellers
Hicklin Yeates

Filed in Open Court
Apr. 20, 1928.
Frank E. Cunningham, Clerk

A True Bill:-

Martin R. West
Foreman.

AUTHENTICATION.

SUPREME COURT OF THE DISTRICT OF COLUMBIA.

I, Frank E. Cunningham, Clerk of the said Court, do hereby certify that the copy of indictment, annexed to this certificate, is a true copy of the original on file and of record in said offices, and that said original indictment is pending in said Court.

Witness my hand and the seal of said Court, this 28th day of April, 1928.

Frank E. Cunningham, Clerk.

I, F. L. Siddon, Presiding Justice of said court, do certify the foregoing attestation by Frank E. Cunningham, Clerk of the said court, to be in due form.

Witness my hand and seal this 28th day of April, 1928.

(Signed) F. L. Siddon,
Presiding Justice.

I, Frank E. Cunningham, Clerk of the said court, hereby certify that the Honorable F. L. Siddons, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same Presiding Justice of said Court, duly commissioned and qualified.

Witness my hand and the seal of said Court, this 28th day of April, 1928.

(Signed)
Frank E. Cunningham, Clerk."

"COPY OF INDICTMENT
from
THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Criminal No. 46931

UNITED STATES
vs.
THOMAS W. CUNNINGHAM."

MR. LEWIS: The law on the subject is so familiar to this Court, that—

THE COURT: Suppose we finish with the evidence first. You have offered the indictment?

MR. LEWIS: Yes.

THE COURT: And, you rest.

MR. LEWIS: Yes, the Government rests.

DEFENDANT'S EVIDENCE AT THE HEARING.

MR. GOLDER: If the Court please, there is, perhaps, in this case, a different question involved than the case that was argued before Your Honor sometime ago. May I first indicate, briefly, what our understanding is as to the practice.

First, we are before your Honor, sitting as a Commissioner, as a committing Magistrate, as it were. Mr. Lewis and we have agreed that bail of $1,000 should be entered by the defendant in this case—

THE COURT: (Interrupting) For what purpose?

MR. GOLDER: For the purpose of allowing us to file a paper book, in the first instance, which will probably take three or four days after the Court has completed its finding—

THE COURT: Well, Mr. Golder, why not complete the record as to the evidential facts, before you go on with any discussion. Do you propose to offer any evidence?

MR. GOLDER: Yes.

THE COURT: Well, then, offer your evidence now, and we will get rid of that.

MR. GOLDER: There is a preliminary question, your Honor, that we would like to submit but I assume that it can be done after the evidence is offered.

THE COURT: I do not mean to break in on you, except to make a suggestion. If there is any reason for raising a question before you go ahead with your evidence, raise it.

MR. GOLDER: Your Honor has not had an opportunity, as yet, to examine the indictment, and it is rather difficult for me to express our position, and even more difficult for you to follow it, in view of the fact that you have not examined the indictment; but, Section 102 of the Revised Statutes provides that if a man is called before a Senate Committee, and declines to answer questions pertinent,—and the word "Pertinent" is used—to the inquiry, that he is then guilty of a misdemeanor.

Section 104 of the same Act provides that upon refusal of a witness to answer questions which have been put to him, which are pertinent, that the President of the Senate, shall refer the matter to the District Attorney for action. It must be certified by the President of the Senate to the District Attorney, for action. The District Attorney cannot initiate any proceedings.

The indictment which has been offered in evidence here merely sets forth some inducing clauses, and then picks out of the record, which is not made a part of the indictment, a series of questions, three or four of them. I read as follows:

> "That thereupon, the Honorable James A. Reed, a member and the chairman of the said committee, for said committee, propounded to the said Thomas W. Cunningham, a certain question which, as the said Thomas W. Cunningham then and there well knew, was a question pertinent to said matters and questions then and there under inquiry before the said committee as aforesaid; that is to say, that having made the following statement to the said Thomas W. Cunningham, and then is quoted from the record:

"The Chairman: Mr. Cunningham, the committee has called you before it the second time in order to permit you an opportunity to answer the questions you declined to answer before, and afford you the opportunity to answer such other questions as may be put to you. Mr. Cunningham, on your previous examination you stated:

"I handed money to Thomas F. Watson, $25,000, on the 10th day of April, 1926."

"Then, this follows, as shown by the record of the proceedings:

"The Chairman: Where did you get that money?

"Mr. Cunningham: I got the money out of my own private funds.

"The Chairman: How is that?

"Mr. Cunningham: Out of my own private funds.

"The Chairman: Your own private moneys?

"Mr. Cunningham: Yes, sir; my own money; my own money.

"The Chairman: How long had it been your own money?

"Mr. Golder at that time stated an objection, which appears in the record.

"The Chairman: How long had it been your own money?

"Mr. Cunningham: I refuse to answer that question, Senator, as a personal question. It is my own private business."

Your Honor can therefore, see that the questions themselves are preceded by a statement in the indictment which is purely a legal conclusion, that Thomas W. Cunningham knew this question to be pertinent.

THE COURT: What difference does it make whether he did or did not, if it was pertinent?

MR. GOLDER: It does not make any difference, except if these questions were pertinent, the fact that the indictment said they were—

THE COURT: There is another question.

MR. GOLDER: That is exactly what we have in mind. The mere fact that the indictment, however, states he knew they were does not affect the situation. If the indictment presented shows upon its face that no crime has been committed, there can be no question of probable cause.

In other words, if the Court sitting as a committing Magistrate, or Commissioner, the indictment, itself, must show that a crime has been committed. In order to constitute a crime under this section, the witness must have refused to answer a question which was pertinent to the inquiry which the Senate was empowered to make.

Reading this indictment, sir, the Court sees that a series of questions, standing by themselves, mean nothing. The declaration in the indictment, wherein they used the word "pertinent", means nothing. Now, Your Honor, before you could hold the defendant to await the action of the Court, you would have to read the indictment, and see, as a matter of law, whether this indictment charges an offense. I submit that by reading the indictment, a series of four or five questions, Your Honor is unable to say, as a matter of law, that the indictment sets forth an offense by the witness. Your Honor is unable to say from an examination of the indictment, that the witness has failed to answer the questions pertinent to the inquiry which the Senate had a right to make.

There are six counts, if the Court please—each one being exactly the same—and in which a question, hanging by itself, and standing by itself, does not disclose that the witness was guilty of an offense against the United States Government.

It is unfair to ask Your Honor, without having had an opportunity to study the indictment, to rule on that question.

It is a question that is more or less involved, and counsel and I did not feel that we were justified in pressing Your Honor, this morning for a ruling upon that question. But, I would like Your Honor when you take up this indictment, to read these questions, and Your Honor will be able to see, then, whether these questions were pertinent to the inquiry which was being made, or whether, from this indictment, the Senate was empowered to make the inquiry.

In order, now, not to press Your Honor for a ruling, this morning, and subject to the objections we are making to the indictment, and in order to complete the record but without waiving any of our rights, we would like to offer in evidence, as I stated, subject to the objection which we made to the indictment, the record of the testimony taken before the Senate Committee. This, of course, cannot prejudice us, because it will not help the indictment if the indictment, itself, is defective.

THE COURT: You offer it is evidence, do you?

MR. GOLDER: Yes.

THE COURT: Is there any objection?

MR. LEWIS: No, sir.

THE COURT: Let it go in.

MR. GOLDER: The testimony appears in the record of the Senate hearings, starting on page 1706 and concluding on page 1715. This testimony was taken in Chicago, sometime during the Summer of 1926.

The testimony last above offered in evidence, is as follows:

"TESTIMONY OF THOMAS W. CUNNINGHAM.
(The witness was sworn by the Chairman.)

The Chairman: Let the record show the appearance of Mr. Golder.

Mr. Golder: Mr. Chairman, in the event that a question is asked which I consider one which Mr. Cunningham should not answer, may I address myself to the Chair or to Mr. Cunningham?

The Chairman: It would be entirely proper for you to address yourself to the Chair and state your objection, the same as you would to a court.

What is your full name, Mr. Cunningham?

Mr. Cunningham: Thomas W. Cunningham.

The Chairman: Where do you reside?

Mr. Cunningham: 2116 Cherry Street, Philadelphia.

The Chairman: How long have you resided in Philadelphia?

Mr. Cunningham: My whole life.

The Chairman: What is your occupation or business?

Mr. Cunningham: Clerk of the Quarter Sessions Court.

The Chairman: With what political organization were you connected during the recent primary in Pennsylvania—the last primary?

Mr. Cunningham: The Republican organization of Philadelphia County.

The Chairman: Who was the chairman of that organization?

Mr. Cunningham: Thomas F. Watson.

The Chairman: And what candidate for the Senate was that organization supporting?

Mr. Cunningham: Congressman Vare—W. S. Vare.

The Chairman: Did you collect any money for use in that campaign?

Mr. Cunningham: I did not.

The Chairman: Was any money given to you for use in that campaign?

Mr. Cunningham: No checks, no drafts, or anything.

The Chairman: That you got money on?

Mr. Cunningham: No, sir.

The Chairman: Did you handle any money in that campaign?

Mr. Cunningham: I did not.

The Chairman: Did you deliver any money to any person?

Mr. Cunningham: I did.

The Chairman: That is handling money, Mr. Cunningham?

Mr. Cunningham: I did not catch your way of saying that.

The Chairman: Very well. To whom did you give any money?

Mr. Cunningham: I handed money to Thomas F. Watson, $25,000 on the 10th day of April, 1926.

The Chairman: Where did you get that money?

Mr. Cunningham: I got that money out of my own private funds.

The Chairman: How is that?

Mr. Cunningham: Out of my own private funds.

The Chairman: Your own private moneys?

Mr. Cunningham: Yes, sir; my own money; my own money.

The Chairman: How long had it been your own money?

Mr. Golder: Mr. Chairman, may I state an objection at this time?

The Chairman: You may.

Mr. Golder: I have advised Mr. Cunningham that, in my judgment, this committee has no jurisdiction to inquire into the primary election held in Pennsylvania; that it is only a local matter for the Commonwealth of Pennsylvania; and that in my professional judgment he can answer those questions which he sees fit dealing with the primary election, and that he may refuse to answer those questions which he considers his own personal business. I have further advised Mr. Cunningham that he need not disclose to this committee from what part of his personal estate, or personal fortune, he paid the money, to Mr. Wat-

son that he did pay during this last campaign in Pennsylvania.

I thought I would state that as a matter of record so that I would not have to object each time a question is asked.

The Chairman: What was my last question?

(The question was read by the reporter as follows:)

The Chairman: How long had it been your own money?

Mr. Cunningham: I refuse to answer that question, Senator, as a personal question. It is my own private business.

The Chairman: Where did you get this $25,000 you say you gave to Mr. Watson?

Mr. Cunningham: I refuse to answer that question. I think that is personal.

The Chairman: Where were you keeping this $25,000 before you gave it to Mr. Watson?

Mr. Cunningham: That is another personal question, Senator. I refuse to answer it.

The Chairman: Did you give this money to Mr. Watson in cash or by check?

Mr. Cunningham: I gave it to him as cash.

The Chairman: Where were you when you gave it to him?

Mr. Cunningham: I took it down to his headquarters at the Walton Hotel on the 10th day of April.

The Chairman: Did you have it in your pocket when you gave it to him—before you gave it to him?

Mr. Cunningham: Yes, sir.

The Chairman: Where did you get it from to put in your pocket?

Mr. Cunningham: That is a personal question, and I decline to answer it.

The Chairman: How long had you had this money in your possession?

Mr. Cunningham: That is another personal question, I decline to answer it. It was my own money, and I do not think I should tell the public

where I kept it and how I got it, or anything else about it.

The Chairman: How long have you been clerk of the Quarter Sessions Court?

Mr. Cunningham: Twenty-one years the 1st of January, 1926.

The Chairman: What is the salary of that position?

Mr. Cunningham: $8,000 a year.

The Chairman: Was this money which you refer to as the $25,000 that you gave to Watson, savings from your salary?

Mr. Cunningham: That is another personal question. I cannot answer that.

The Chairman: Unfortunately, a good many questions are personal.

Mr. Cunningham: Yes. I think a man's own money is one of his own personal privileges, and he is not supposed to tell how he got it or how he saved it. I think that is a rather unfair question to ask me, how I got the money, how I saved it, and what I done with it.

The Chairman: I dare say. Is there anything wrong or wicked or crooked about the way you got this money, so that it will embarrass you to answer the question or will subject you to criminal prosecution?

Mr. Golder: I think that is an unfair question, Senator, and I advise Mr. Cunningham to disregard it.

The Chairman: If you were to answer the questions I have asked you with regard to the sources from which and the way in which this money came to you, would it tend to subject you to criminal prosecution or public contempt or obloquy?

Mr. Golder: Senator Reed, I think that question is objectionable in form and the way in which it is put, and I advise Mr. Cunningham not to consider it, or not to answer it.

The Chairman: Do you refuse to answer, Mr. Cunningham?

Mr. Cunningham: Yes, I refuse to answer.

Mr. Golder: You see, Senator, when you ask a question which you know that I have advised Mr. Cunningham not to answer, and put it in such a way as you have, it necessarily implies something which is unsavory, and I think it is an unfair way for you to treat a witness.

The Chairman: Well, now, we have permitted you to sit here as an act of courtesy, but we will not permit any criticism of the committee from you.

Mr. Golder: Senator Reed, you have permitted Mr. Cunningham to have his attorney here, and I assume you will not compel me to advise Mr. Cunningham except as I think best.

The Chairman. You will maintain a respectful and decent attitude or you will not sit at this table very long as anybody's attorney.

Mr. Golder: Senator Reed, I have the utmost respect for the Committee and for its membership.

The Chairman: You may make your objections and make them in a proper way.

Mr. Cunningham, is there any other reason than the one you have given, or are there any other reasons than those you have given, why you refuse to answer the questions that have been put to you touching the sources from which the $25,000 came? Have you any other reasons than those you have given?

Mr. Cunningham: That is all, Senator; just personal reasons.

The Chairman: Very well; that is all I want to cover.

Mr. Cunningham: All right, sir.

The Chairman: Where were you when the subpœna was issued for you from this committee, while it was having its sessions in Washington?

Mr. Cunningham: I went on a vacation on the 19th day of June and did not get back until the 8th day of July.

The Chairman: Where were you during that interval?

Mr. Cunningham: I was on an automobile tour up through the southern coast of New Jersey.

The Chairman: What places did you visit?

Mr. Cunningham: I think that is a private, personal question, Senator. I would not answer it.

The Chairman: Where did you stay nights?

Mr. Cunningham: I think that is another private question, as I have said. What material difference does it make? I am not in the habit of telling where I went and what I done; never have in my life, Senator.

The Chairman: You knew that a subpœna had been issued for you, didn't you?

Mr. Cunningham: The last three or four days I got in touch with the papers, and I found out that there were subpœnas, according to the newspapers, and I came back to Philadelphia on the 8th day of July.

The Chairman: Did you give any other money than the $25,000 to anybody during this campaign?

Mr. Cunningham: Yes; on the 13th of April I gave Mr. Watson $25,000 more.

The Chairman: So that you gave Mr. Watson a total of $50,000?

Mr. Cunningham: $50,000; of my own money.

The Chairman: Where did you get the second $25,000 from?

Mr. Cunningham: I refuse to answer that question, Senator.

The Chairman: You refuse to tell the committee anything about where you received this money from?

Mr. Cunningham: Yes, I do.

The Chairman: The sources from which the money was received?

Mr. Cunningham: Yes.

The Chairman: How long had the money been in your possession? You refuse to tell that to the committee?

Mr. Cunningham: I certainly do, because I think that is a personal, private question.

The Chairman: How long have you been saving up or accumulating this $50,000?

Mr. Cunningham: I do not like to object to your questions, Senator, because I think a man's own money—Why, I don't want to make it public

to the press, to the newspapers in Philadelphia, about my private affairs, how I got this money, or how I saved it.

The Chairman: Have you inherited any considerable sums of money

Mr. Cunningham: Never inherited a dollar in my life.

Mr. Chairman: Have you been speculating in stocks or bonds or upon the board, so that you accumulated the money in that way

Mr. Golder: I object to that question and advise Mr. Cunningham that he need not answer.

The Chairman: What does the witness say?

Mr. Cunningham: I refuse to answer.

The Chairman: Have you turned in on your tax returns any $50,000 for taxation purposes?

Mr. Golder: I object to that question, Senator, and advise the witness that he need not answer.

Mr. Cunningham: I refuse to answer.

The Chairman: Have you paid to the State of Pennsylvania, the county in which you live, or the city in which you live, any taxes upon this $50,000?

Mr. Golder: I object to that question, Senator, and advise the witness that he need not answer. As a matter of fact, there is not taxation in Pennsylvania on any such amount.

Mr. Cunningham: I refuse to answer, Senator.

The Chairman: Have you returned to the Federal Government this $50,000 in any form?

Mr. Golder: I object to that question, Senator, and advise the witness he need not answer.

Mr. Cunningham: I refuse to answer.

The Chairman: Did you collect any money from persons employed either by the City of Philadelphia or by the State of Pennsylvania?

Mr. Cunningham: Not a dollar.

The Chairman: Were any moneys paid to you by any of these persons I have just referred to?

Mr. Cunningham: No, sir.

The Chairman: Do you know of any collection of money from State employees for political purposes?

Mr. Cunningham: I do not, Senator.

The Chairman: Do you know of any contributions by the employees of the City of the Vare campaign?

Mr. Cunningham: I will tell you for information that in the primary election there is never any assessment of any kind. In primary elections we never heard tell of any donations from employees.

The Chairman: In the primaries?

Mr. Cunningham: In the primary elections.

The Chairman: Do you know Martin Powers?

Mr. Cunningham: Yes, sir.

The Chairman: Did you spend any of this vacation at his home in New Jersey?

Mr. Cunningham: How is that?

The Chairman: Did you spend any part of your vacation in company with Mr. Martin Powers?

Mr. Golder: Mr. Chairman, I object to that question. The witness has already testified that he declines to state where and with whom he spent his vacation.

The Chairman: I did not ask him with whom he spent it until just now.

Mr. Golder: I advise the witness that he need not answer that question.

Mr. Cunningham: I refuse to answer the question, Senator.

The Chairman: Did you leave the City of Philadelphia with Mr. Powers?

Mr. Golder: I advise the witness that he need not answer that question, Senator.

Mr. Cunningham: I did not.

The Chairman: Did you leave the City of Philadelphia in an automobile?

Mr. Golder: I advise the witness that he need not answer that question, Senator, it being entirely immaterial and a personal matter.

Mr. Cunningham: I refuse to answer.

The Chairman: Whose car did you leave in?

Mr. Golder: I advise the witness that he need not answer that question.

Mr. Cunningham: I refuse to answer, Senator.

The Chairman: You say you know Mr. Powers. What is his business?

Mr. Cunningham: I have known Mr. Powers from boyhood. He is a member of the bar, attorney-at-law.

The Chairman: Is he connected with a trust company in Philadelphia?

Mr. Cunningham: I do not know.

The Chairman: Did Mr. Powers formerly have a partner who is now president of a trust company?

Mr. Golder: I advise the witness that he need not answer that question.

The Chairman: Oh, well, now, that is getting to be sheer insolence, to advise a witness not to answer a question of that kind. It could not possibly harm this witness.

Mr. Golder: Perhaps not, Senator; but it might lead to other things. I think we ought to draw the line of advising the witness what he may answer and what he should not answer.

Mr. Cunningham: I do not know anything at all about that, Senator.

The Chairman: If you came here to tell this witness that he should not answer any questions, whether it is pertinent or not, you are abusing the courtesy of the committee extended to you, whether it is a thing that could possibly affect his own honor or his own private business.

Mr. Golder: Senator, I do not agree with you; and I am sorry to disagree with you.

The Chairman: Well, I am sorry you do.

Mr. Golder: But I must use my own judgment.

The Chairman: You may use it as long as we permit you to sit here; but if you abuse the privilege you will not sit here.

Mr. Golder: I do not intend to abuse it, Senator.

The Chairman: Well, you are abusing it. Did Powers formerly have a partner whose name began with 'Mac'?

Mr. Cunningham: I do not know the first thing about it, Senator. I do not know anything at all about Powers' private business whatever.

The Chairman: Did you have in your possession, of your own money, 30 days before you say you gave this money to Watson, as much as $1,000?

Mr. Cunningham: As much as $1,000?

The Chairman: Yes.

Mr. Cunningham: Oh, yes, sir.

The Chairman: What bank do you bank in?

Mr. Golder: Mr. Chairman, I object to that question, and advise the witness that he need not answer.

The Chairman: What is the answer of the witness?

Mr. Cunningham: I refuse to answer.

The Chairman: Have you ever had a bank account anywhere?

Mr. Cunningham: Sure.

The Chairman: Where?

Mr. Cunningham: I have a bank account for my office.

The Chairman: A bank account in your office?

Mr. Cunningham: I say I have to run my office, and therefore I have to use a bank account for the proceeds of my office.

Mr. Chairman: Is that your personal account?

Mr. Cunningham: One of them is; yes.

The Chairman: What bank is it in?

Mr. Golder: Senator, I object to that question and advise the witness he need not answer where he deposits his money, it being entirely a private matter.

Mr. Cunningham: I refuse to answer.

The Chairman: I do not intend to get into an argument with you, Mr. Golder. You know perfectly well that when a man states that he had $50,000, and it was his own money, and assuming, now, that this committee has any jurisdiction—which I understand you challenge, and which you have a right to challenge—we have the right to test the reasonableness of that story. We are not concluded by the bald statement that it was the witness' own money; and so we have a right to know, assuming that we have any right at all to

conduct this investigation the source from which this money came, in order that we may ascertain whether, as a matter of fact, the witness did have it. So, with that explanation, I am asking the witness where he kept his bank account.

Mr. Golder: Senator, may I be permitted to state our position?

The Chairman: You have stated it, I think.

Mr. Golder: May I repeat it, then, in answer to what you have just said?

My position is that this committee had no right, in the first place, to inquire whether this witness contributed anything to the Pennsylvania Primary. If the witness saw fit to state that he did, that does not waive any right that he may have to refuse to answer any other question connected or disconnected with the $50,000. I do not think this committee had any right to inquire into the $50,000 initially.

The Chairman: And, of course, you think that your opinion is the final word as to the law?

Mr. Golder: It will be with Mr. Cunningham, at least at this time.

The Chairman: We will ascertain whether that is true or not a little later. How long have you known Congressman Vare?

Mr. Cunningham: Ever since I have been a boy—35 or 40 years, I guess.

The Chairman: Were you in any way connected with his campaign committee, the committee which was conducting his campaign in the last primary?

Mr. Cunningham: Only in one way; I was for him after he concluded to be a candidate for United States Senator.

The Chairman: Did you ever talk with him?

Mr. Cunningham: I talked with him on several occasions about it.

The Chairman: With him during the campaign?

Mr. Cunningham: No, sir. This was prior to the campaign, before he came out as a candidate.

The Chairman: Did you urge him to come out?

Mr. Cunningham: No; I rather urged the other way, Senator.

The Chairman: When he did come out, you became one of his supporters?

Mr. Cunningham: Because our organization, as a rule—if the majority make up their mind to be for a candidate—the majority made up their minds for William S. Vare, and I went along with the majority.

The Chairman: When you speak of 'our organization,' what organization do you mean?

Mr. Cunningham: The Republican City Committee of Philadelphia. We have 48 wards; 48 members of that committee.

The Chairman: Are you a member?

Mr. Cunningham: A member of that committee; yes, sir.

The Chairman: For which ward?

Mr. Cunningham: The tenth ward.

The Chairman: During the campaign, then, after the organization resolved to support Vare, you gave him your loyal support?

Mr. Cunningham: Yes, sir.

The Chairman: Who asked you to make this contribution of $50,000?

Mr. Cunningham: Nobody asked me, Senator, I will tell you the reason why I made this contribution.

I was a Penrose man to the day he died, in Philadelphia. Eddie Beidleman and Harry Baker have been the same as my own two sons, and were very close friends of Penrose's to the day of his death. Beidleman's ambition was to be governor. I was for Beidleman four years ago. George Alder was picked, and he had to step aside. This time I thought that he would make the best governor of Pennsylvania ever had. I thought he was the most practical man in the State of Pennsylvania, a man who was a member of the legislature, State senator for four years, lieutenant governor four years, and a real man, and I thought he would make the best governor Pennsylvania ever had, and I was very fond of him. Now, that was my whole interest.

The Chairman: Had you ever made any such contribution as this before out of your own money?

Mr. Cunningham: Never before in my life. I had made small contributions, a hundred or five hundred dollars at different times, to help some poor fellow running for council.

The Chairman: Are you a man of considerable means, Mr. Cunningham?

Mr. Cunningham: Well, pretty fairly at the present time.

The Chairman: Did you draw this money out of any bank?

Mr. Cunningham: No, sir.

The Chairman: How long had you had it in your pocket?

Mr. Golder: Mr. Senator, I think we have had that question up before, and I advised him not to answer.

Mr. Cunningham: I think I answered that before.

The Chairman: I thought you might change your mind.

Mr. Cunningham: No. You are so nice about it, anybody would change their mind if he felt inclined to change it, Senator.

The Chairman: I desire to be nice to everybody.

Mr. Cunningham: I know it; I have seen that since I have been here, the last four days.

The Chairman: You are the only man who has come here who has been unwilling to tell where he got his money.

Mr. Cunningham: Well, Senator, I am an American citizen. I was born in the greatest American city today in the United States, Philadelphia, and I have never been used to telling people where I went or what I done or how I made my money, and I am too old now to change my thought of mind.

The Chairman: You just formed the habit of independence?

Mr. Cunningham: I formed that habit through my late friend, Senator Penrose. I guess I learned that trick from him—saving money and putting it

away and keeping it under cover. I have been with him, and I was his friend to the day he died.

The Chairman: You say you learned this habit of putting it away, from Penrose?

Mr. Cunningham: Yes, sir. He was a past master in not letting his right hand know what his left hand done, and he dealt absolutely in cash. The 'long green' was the issue.

The Chairman: Is there any danger involved in your right hand knowing what your left hand does?

Mr. Cunningham: Well, I never let it be known.

The Chairman: You do not even want to know, yourself?

Mr. Cunningham: Sometimes I really do not.

The Chairman: And that is one of the attributes of independence in Pennsylvania, is it?

Mr. Cunningham: Yes, sir.

The Chairman: That your right hand shall not know what your left hand does?

Mr. Cunningham: Yes, sir. If a great many people would do that, there would not be so much trouble in Chicago and other big cities.

The Chairman: That is, you mean by that, I think, Mr. Cunningham, that if you do a thing secretly enough, so that nobody ever finds out about it, you never have any trouble about it?

Mr. Cunningham: So long as you do it honestly it is all right, Senator.

The Chairman: And if you are doing it honestly, all the more reason for secrecy, I presume?

Mr. Golder: Senator, are you not really arguing with the witness?

The Chairman: I am trying to get the witness' mental slant on this. Mr. Cunningham, I want to be perfectly frank with you. It will be the duty of the committee to report you to the United States Senate for contempt. That is not a threat; we are not making threats. That is the fact. Then, of course, it will have to be determined whether you have to answer these questions. What the result may be will have to be determined by the Senate and possibly by the

courts. I think it is only fair to make that statement to you, and having made it, I ask you if you adhere to the position you have taken in your various refusals to answer?

Mr. Golder: Senator, your voice dropped near the end; I do not think Mr. Cunningham heard all that you said.

The Chairman: The stenographer will read my statement.

(The reporter read as follows:)

Mr. Cunningham, I want to be perfectly frank with you. It will be the duty of the committee to report you to the United States Senate for contempt. That is not a threat; we are not making threats. That is the fact. Then, of course, it will have to be determined whether you have to answer these questions. What the result may be will have to be determined by the Senate and possibly by the courts, I think it is only fair to make that statement to you, and having made it, I ask you if you adhere to the position you have taken in your various refusals to answer?

Mr. Cunningham: I do, Senator.

The Chairman: Very well, that is all, sir."

Mr. Golder: The second portion of testimony, is that which was taken in Washington, on February 21st, 1927. This testimony appears on pages 3390 to 3393 of the Senate hearings.

May I repeat, Your Honor, in order that the record may be perfectly clear, that this testimony is only offered now in the event that Your Honor shall rule against us on the proposition as the indictment, itself, does not set forth an offense, in the interest of saving time, and in fairness to all concerned.

Testimony reads as follows:

"(The witness was sworn by the chairman.)

Mr. Golder: Mr. Chairman, if any questions are asked which I consider Mr. Cunningham should not answer, should I address myself to the Chair?

The Chairman: Yes. Your full name is—

Mr. Cunningham: Thomas W. Cunningham.

The Chairman: You are the Thomas W. Cunningham who appeared before this committee?

Mr. Cunningham: I am.

The Chairman: And gave certain testimony, and refused to answer certain questions at the previous hearing?

Mr. Cunningham: Yes, sir.

The Chairman: Mr. Cunningham, the committee has called you before it the second time in order to permit you an opportunity to answer the questions you declined to answer before, and afford you the opportunity to answer such other questions as may be put to you.

Mr. Cunningham: On my previous examination you stated (reading):

I handed money to Thomas F. Watson $25,000 on the 10th day of April, 1926.

Then this follows, as shown by the record of the proceedings (reading):

The Chairman: Where did you get that money?

Mr. Cunningham: I got that money out of my own private funds.

The Chairman: How is that?

Mr. Cunningham: Out of my own private funds.

The Chairman: Your own private moneys?

Mr. Cunningham: Yes, sir; my own money; my own money.

The Chairman: How long had it been your own money?

Mr. Golder at that time stated an objection, which appears in the record. The question was repeated, as follows (reading):

The Chairman: How long had it been your own money?

Mr. Cunningham: I refuse to answer that question, Senator, as a personal question. It is my own private business.

I now ask you that same question again, Mr. Cunningham.

Mr. Cunningham: Same answer.

The Chairman: On behalf of the committee, I instruct you to answer the question.

Mr. Cunningham: I refuse to answer, Senator.

The Chairman: Very well. The next question which was asked you was as follows (continuing reading):

The Chairman: Where did you get this $25,000 you say you gave to Mr. Watson?

Mr. Cunningham: I refuse to answer that question. I think that is personal.

I now ask you, on behalf of the committee, the same question, and await your answer.

Mr. Cunningham: I refuse to answer.

The Chairman: On behalf of the Committee, I instruct you to answer.

Mr. Golder: Mr. Chairman, may I—

The Chairman: No; you may not. This man is getting along all right.

Mr. Cunningham: I refuse to answer, Senator.

The Chairman: Now, you may make any suggestion you want to.

Mr. Golder: Too late, now, Senator.

The Chairman: I do not intend that you shall suggest the answers to a witness while I am examining him. You may make any objection you want to.

Mr. Golder: I addressed myself to the Chair, Mr. Chairman.

The Chairman: I want to extend every courtesy and every right.

Mr. Golder: You usually do, Senator. I do not think you understood me.

The Chairman: The next question that was asked you was as follows (continuing reading):

The Chairman: Where were you keeping this $25,000 before you gave it to Mr. Watson?

Mr. Cunningham: That is another personal question, Senator. I refuse to answer it.

I now ask you the same question, that is, where were you keeping this $25,000 before you gave it to Mr. Watson?

Mr. Cunningham: I refuse to answer.

The Chairman: Again I instruct you, on behalf of the committee, to answer.

Mr. Cunningham: I refuse to answer.

The Chairman: Very well. You were asked a number of questions, which I will read from the context, (continuing reading):

The Chairman: Did you give this money to Mr. Watson in cash or by check?

Mr. Cunningham: I gave it to him as cash.

The Chairman: Where were you when you gave it to him?

Mr. Cunningham: I took it down to his headquarters at the Walton Hotel on the 10th day of April.

The Chairman: Did you have it in your pocket when you gave it to him—before you gave it to him?

Mr. Cunningham: Yes, sir.

The Chairman: Where did you get it from to put in your pocket?

Mr. Cunningham: That is a personal question, and I decline to answer it.

I now ask you again, where did you get it? That is, where did you get this money from to put in your pocket?

Mr. Cunningham: I refuse to answer.

The Chairman: And I direct you, on behalf of the committee, to answer.

Mr. Cunningham: I refuse to answer.

The Chairman: Very well. The next question asked you was (continuing reading):

The Chairman: Mr. Cunningham, how long had you had this money in your possession?

Mr. Cunningham: That is another personal question, and I decline to answer it. It was my own money, and I do not think I should tell the public where I kept it and how I got it, or anything else about it.

I now ask you, how long had you had this money in your possession?

Mr. Cunningham: I refuse to answer.

The Chairman: Again I instruct you to answer?

Mr. Cunningham: I refuse to answer.

The Chairman: You were then asked questions touching your salary, and after that, this question (reading):

The Chairman: Was this money which you refer to as the $25,000 that you gave to Mr. Watson, savings from your salary?

Mr. Cunningham: That is another personal question. I cannot answer that.

I now ask you again, was this $25,000 which you refer to as the $25,000 that you gave to Watson, savings from your salary?

Mr. Cunningham: I refuse to answer.

The Chairman: And I instruct you, on behalf of the committee, to answer.

Mr. Cunningham: I refuse to answer.

The Chairman: Now, Mr. Cunningham, you recall the testimony you gave before, I take it, fairly well?

Mr. Cunningham: I think I do, Senator.

The Chairman: We have called you here for the purpose of giving you an opportunity to purge yourself of what we regard as contempt of the committee and of the Senate. Do you still stand upon your refusal to answer the questions which were asked you on the previous hearing?

Mr. Cunningham: I do, sir.

The Chairman: You have nothing to say further as to your reasons for refusing to answer than you stated before?

Mr. Cunningham: I have not.

The Chairman: Mr. Cunningham, I think you will have to agree that at least the committee has given you every opportunity to make an explanation. If you do not desire to make it, of course, you have the right.

Mr. Cunningham: The only thing I was interested in, as I told you before, Senator, was Beidleman, and not any other project. If he had not been on the ticket I would not have given it.

The Chairman: Do you know whether it was reported in Mr. Beidleman's campaign expenses?

Mr. Cunningham: I really do not know that. I instructed Mr. Watson what my thought was

about it, because he had been a friend of mine for forty odd years, and that was my only interest in it.

The Chairman: You are excused from further attendance on the committee, sir."

(Whereupon, counsel for the defendant argued in support of their contention, that the warrant of removal should not be issued, and Mr. Lewis, on behalf of the Government, replied thereto.)

(Decision reserved.)

OPINION SUR HEARING UPON PETITION, WRIT, RETURN AND TRAVERSE.

(Filed May 10, 1928.)

DICKINSON, *J.*

We have entitled this cause as above. There are in form three proceedings.

1. Hearing by the Court sitting as a Committing Magistrate under R. S. 1014.

2. Motion for warrant of removal.

3. Hearing upon writ of Habeas Corpus.

For the convenience of the Court and of counsel and parties, it was arranged that the Court should sit as a Committing Magistrate and as such would determine all questions which might be raised in any one or all of the proceedings listed. If the Court was of opinion that the defendant should not be held for trial no other steps need be taken. If, however, the Court should hold the defendant for trial, then a formal commitment should issue and a formal motion be made to remove the defendant who being in custody under such com-

mitment should then ask for a writ of Habeas Corpus. All questions which might arise would however, as above stated, be discussed in the one argument and disposed of in one opinion. Leave was further given to file Briefs, after consideration of which the Court was to file its opinion in accordance with which the called for formal orders would be entered.

The cause is now ripe for a ruling.

The conclusion reached is that the relator in the Habeas Corpus proceeding and the defendant in the others should be committed for trial. This means that the removal order should be allowed; the petition for the writ of Habeas Corpus be dismissed and the relator remanded. Upon appeal taken he is to be enlarged pending appeal upon bail being entered.

DISCUSSION.

We see no real need to discuss the questions raised at the argument at Bar but defer to the wish of counsel to put an expression of our views upon record. In the opinion the relator is named defendant. The defendant was indicted by the Grand Jury of the District of Columbia for the offence defined and denounced in R. S. 102. Aside from the verbiage of the Act of Congress, the real offence is that when a witness before a Committee of the Senate the defendant in contempt of the tribunal conducting the inquiry then being made refused to answer a pertinent question addressed to him. The evidence before us consists of the indictment mentioned and the stenographic report of the hearing then being conducted. We have often had occasion to state that a right of great practical value belongs to every one charged with crime. It is expressed in the formulation of the broad question of whether he ought to be put upon his trial. This is the question which it is the special duty of committing Magistrates and Grand Juries to determine. Indeed it is the special and only

duty which they perform. On occasion Courts declare the answer to the same question and this is the question before us. Put thus broadly the suggested answer is in the affirmative. This defendant was a witness before a lawfully constituted tribunal; he was asked a series of questions which he refused to answer and the consequence is that he should stand trial for the charged offence. Why should he not? The distinction is an obvious one, but should be kept in mind, between the propriety of the defendant being put on trial, and the other question of his guilt. None the less if, on the showing date, the defendant is not charged with a legal offence or if what is called probable ground for belief in his guilt does not appear, there would be no justification for compelling him to stand trial. It is this proposition on which the defendant takes his stand. It is a legal truth that no proof, however clear, of a defendant's guilt can be accepted in a Court of Criminal law unless he has been in due form first charged with the commission of the offence. Due form embraces the two thoughts of the statement of a substantive offence and the verbiage chosen to give it expression. If the former be lacking in an indictment all are agreed that the defendant should not be held for trial. In the case of the latter however the question divides. If raised in the trial Court it could be raised by a demurrer. The Courts of the United States are commanded to disregard even a well founded criticism of an indictment because inartificially or indeed defectively drawn unless some right of the defendant be, in the opinion of the Court, prejudiced thereby. Hence the division of the question above mentioned. The first part of the question becomes one of which is the tribunal which is to find whether any right of the defendant is affected by the defect in the indictment. Should the Court in, for illustration, a Habeas Corpus hearing or the trial Court make the finding? Here it often may be found

that there is such an overlapping of the thoughts referred to that one becomes the other. A defect in verbiage may be so great as that no substantive charge can be extracted from it or it may be so near the boundary line that it may be viewed as a case of the absence of a substantive charge or as one of a denial to the defendant of his right to be informed of the charge made against him. Here we think the rule to be followed is that if the act with the commission of which the defendant is charged is one which has not been made a criminal offence by the law, the defendant should not be required to stand trial; if, however, the indictment may be so read as to charge a criminal act and the question is one which turns upon the verbiage employed, the question of the sufficiency of the indictment should be referred to the trial Court.

Benson vs. Henckel, 198 U. S. 1;
Beavers vs. Henckel, 194 U. S. 82;
Ex rel. Mayer, not yet reported, opinion filed April 19th, 1928;
Ex rel. Tassell, 11 Fed. Rep. (2nd), 53;
Swan vs. U. S., 23 Fed. Rep. (2nd) 148.

Applying these general principles to the fact situation of the instant case, we have questions raised which, for the purpose of this discussion, may be summarized as we have with no attempt at fullness and perhaps inadequately formulated them.

1. Absence of probable cause.

The gist of the offence charged is the refusal to answer one or more pertinent questions. No one of the questions stated in this indictment was either pertinent or relevant to the inquiry before the Senate Committee but on the contrary were probings into the purely personal, private affairs of the witness

with which neither the Senate nor the public interests of the inquiry had any concern. The broad question of the propriety of a particular interrogatory or the narrower one of the relevancy or pertinency of evidence to be elicited thereby is a question which cannot be ruled upon consideration of the naked question alone. It must have read into it all its environments, including the atmosphere of the trial and the personality and demeanor of the witness. None but the trial Court (or an Appellate Court upon a review of the whole trial) can make the called for ruling. An incident of the argument at Bar illustrates this truth. The questions addressed to the defendant were compared with amair of triumphant humor to a question addressed to a supposititious witness who had testified on examination in chief to specific acts which had no relation to cats. The supposed question on cross-examination was "did you ever see a cat which had five legs"? If the trial Judge had nothing to guide him to a ruling other than the question itself it is clear that he would disallow it. If, however, the atmosphere of the trial and the personality of the witness suggested the probability that the witness was unbalanced; that he was crazy on the subject of cats and that one of his insane delusions was that every cat had five legs and would so answer the question, it is just as clear that the question was pertinent and the answer had a direct bearing upon the credibility of the witness.

In the view we take the pertinency of the questions asked is not one by which we should determine the other question of whether this defendant should stand trial, and in consequence we should pass no opinion upon the question of pertinency further than the statement of the broad proposition that we decline to rule that no substantive offence is charged in this indictment.

2. The substantive offence charged against the defendant is one of contempt in that he had defied the authority of the Senate of the United States by refusing to answer pertinent questions addressed to him which he had been required to answer.

It is objected that the evidence shows that no such offence was committed. All it shows is that the witness exercised his right to object to the questions asked and to decline to answer them because they were impertinent and irrelevant in that they asked for a disclosure of personal, private matters which had nothing to do with the matters of public concern under inquiry nor with the business of the Senate or its Committee. The evidence shows that no ruling was made upon his objection nor was he directed to make answer to any of the questions asked. Not having been put in contempt he could not be guilty of the offence of contempt.

Again, our view is that this raises the question of guilt with which this Court has nothing to do sitting as a Committing Magistrate, or upon Habeas Corpus hearing or upon a motion for an order of removal. We again limit ourselves to the ruling that the defendant should stand trial at which this and all other matters of defence may be urged.

3. If the offence charged is viewed as one not for a contempt but one under Section 102 of the Criminal Code for a refusal to answer "pertinent" questions, then the objection is raised that there is no evidence that the questions asked were pertinent. The only evidence against the defendant is the indictment and it is barren of any averment that the questions were pertinent. The record of the proceedings in which the questions were asked and the questions themselves show that they were not pertinent and that the facts sought to be elicited were wholly irrelevant to the inquiry being conducted.

The effect of the evidence has already been sufficiently discussed. The other question is one of the sufficiency of the averments of the indictment. We assume the defendant is at full liberty to raise the suggested question respecting the indictment when his case is called for trial or at an earlier stage in the trial Court. At all events, we repeat the ruling already several times made that it is beside our province to determine the question raised and because of this we do not discuss it.

Appropriate orders in accordance with this opinion may be submitted.

PETITION FOR WRIT OF HABEAS CORPUS.

(Filed May 10, 1928.)

To the Honorable, the Judges of the District Court of the United States for the Eastern District of Pennsylvania:

1. Your petitioner, Thomas W. Cunningham, respectfully represents to your Honorable Court that he is a citizen of the United States and a resident of the City and County of Philadelphia, State of Pennsylvania, within this judicial district.

2. Your Petitioner further represents that he is now actually, unjustly and unlawfully imprisoned and restrained of his liberty and detained by W. Frank Mathues, United States Marshal, by virtue of a warrant of removal issued to the said W. Frank Mathues, by the Honorable Oliver B. Dickinson sitting as a United States Commissioner.

3. That in the application for a warrant of removal before the Honorable Oliver B. Dickinson, sit-

ting as commissioner aforesaid, the United States Attorney for the Eastern District of Pennsylvania, George W. Coles, Esquire, acting through his lawful deputy, presented as evidence of probable cause for said removal a certain indictment found by the Grand Jury of the District of Columbia of the United States and no other testimony.

4. That your Relator, Thomas W. Cunningham, in rebuttal of said affidavit, presented and put in evidence at said hearing the entire transcript of the questions and answers propounded to him by a certain committee of the United States Senate, first at Chicago, Illinois, and secondly at Washington, D. C.

5. That your Petitioner has never been guilty of any crime against the United States of America and in particular of any violation of Revised Statutes No. 102 of the United States of America, in that he has at no time failed, neglected or refused to answer any questions pertinent to any inquiry made by either House of Congress or by a Committee of either House of Congress, concerning a matter over which each House had jurisdiction to investigate.

6. That there was not sufficient evidence of probable cause presented at the hearing aforesaid, in that the indictment offered and received in evidence was totally lacking in precision and particularly in the allegations of the essential elements necessary to describe a violation of Revised Statute No. 102, as aforesaid. That said indictment, together with the transcript of the testimony upon which it must be based, failed to disclose, inter alia, that the questions therein set forth at large, which your Relator refused to answer, were pertinent questions in the inquiry then being made by the particular Committee of the United States Senate therein described; that said indictment

and the evidence aforesaid showed conclusively that none of the questions and answers set forth in said indictment had anything to do with the General Election of William S. Vare, a candidate for United States Senate, therein referred to and that said indictment failed to allege and disclose that the inquiry which said Senate Committee was then making was one over which by the Constitution of the United States they had jurisdiction and authority.

7. Your Petitioner further avers that despite the above facts, the Judge aforesaid, sitting as United States Commissioner, issued a warrant to the said W. Frank Mathues, United States Marshal, for the removal of your relator, Thomas W. Cunningham, to the District of Columbia, there to stand trial, by virtue of which warrant the said W. Frank Mathues now has your Petitioner in custody and has deprived him of his lawful liberty.

WHEREFORE your Petitioner prays your Honorable Court that a writ of habeas corpus may issue, directed to the said W. Frank Mathues, United States Marshal, aforesaid, and to each and all of his deputies, requiring him and them to bring and have your Petitioner, together with a true cause of the detention of your Petitioner before this Court at the time by this Court determined to the end that due inquiry may be had in the premises and that the Court may proceed to determine the facts of this case in that regard and the legality of your Petitioner's imprisonment, restraint and detention and thereupon to dispose of this Petitioner as law and justice may require.

And your Petitioner will ever pray, etc.

(S) THOMAS W. CUNNINGHAM.

IN THE DISTRICT COURT OF THE UNITED STATES
EASTERN DISTRICT OF PENNSYLVANIA } *ss:*

THOMAS W. CUNNINGHAM, being duly sworn according to law, deposes and says that he is the Petitioner in the foregoing Petition, and that the facts set forth therein are true and correct to the best of his knowledge, information and belief.

THOMAS W. CUNNINGHAM.

Sworn to and subscribed
before me this 10th day of
May A. D. 1928.

GEORGE BRODBECK,
Clerk, U. S. District Court E. D. of Pa.

ORDER DISMISSING PETITION FOR WRIT OF HABEAS CORPUS.

(Filed May 10, 1928.)

AND NOW, to wit: May 10, 1928, it is ORDERED that the above named relator be, and he is hereby, remanded into the custody of the United States Marshal for the Eastern District of Pennsylvania, and that the petition for the writ of habeas corpus be, and it is hereby, dismissed.

By the Court
(S) DICKINSON, *J.*

ASSIGNMENTS OF ERROR.
(Filed May 10, 1928.)

AND Now, to wit: this 10th day of May, A. D., 1928, comes Thomas W. Cunningham, the above named relator, and assigns the following errors in the proceedings, holding and judgment of the said District Court in this cause:

1. The Court erred in dismissing the petition for the writ of habeas corpus filed in the above case by the relator, by Decree filed May 10, 1928, as follows:

> "And Now, to wit: May 10, 1928, it is Ordered that the above named defendant be, and he is hereby, remanded into the custody of the United States Marshal for the Eastern District of Pennsylvania, and that the petition for the writ of habeas corpus be, and it is hereby, dismissed.
>
> By the Court
> Dickinson, J."

2. The Court erred in failing to order the discharge of the relator from custody, said decree being as follows: (Decree under assignment of error No. 1 incorporated herein by reference).

3. The Court erred in directing that a warrant of removal shall issue, said decree being as follows: (Decree under assignment of error No. 1 incorporated herein by reference).

4. The Court erred in directing the removal of your relator, Thomas W. Cunningham, said decree being as follows: (Decree under assignment of error No. 1 incorporated herein by reference).

(S) OTTO KRAUS, JR.,
" BENJAMIN M. GOLDER,
" RUBY R. VALE,
Attorneys for Relator.

PETITION FOR APPEAL WITH SUPERSEDEAS.
(Filed May 10, 1928.)

To the Honorable, the Judges of the said District Court:

The petition of Thomas W. Cunningham, the relator, respectfully represents:

That your petitioner is aggrieved by the judgment of the said District Court entered on the 10th day of May, 1928, dismissing your petitioner's petition for a writ of habeas corpus filed in the above proceedings, and directing the removal of your petitioner from the Eastern District of Pennsylvania to the District of Columbia.

That your petitioner prays for an appeal and that upon his giving bond in an amount to be fixed by this Court that said appeal may operate as a supersedeas, and that a transcript of the record and proceedings had before Hon. Oliver B. Dickinson, sitting as a United States Commissioner; and the record and proceedings before this Court in the Habeas Corpus proceedings and sur motion for a warrant of removal, as also the opinion, holdings and judgment herein rendered, all duly authenticated, may be sent to the United States Circuit Court of Appeals for the Third Circuit, and that such other and proper proceedings may be had as may be proper in the premises, and your petitioner files herewith his Assignments of Error.

WHEREFORE, your petitioner, the said Thomas W. Cunningham, for the said errors assigned, and other reasons apparent on the face of the record, prays that the holdings and judgment of the District Court dismissing his petition for writ of habeas corpus filed in the above matter and directing his removal to the District of Columbia for trial be reversed, and that the judgment and order of the United States District

Court be set aside, and that there may be judgment granting your petitioner's application for a writ of habeas corpus and discharging him from custody.

(S) Otto Kraus, Jr.,
" Benjamin M. Golder,
" Ruby R. Vale,
Attorneys for Petitioner.

United States of America
Eastern District of Penna. } *ss:*

Thomas W. Cunningham being duly sworn according to law, deposes and says that the facts set forth in the foregoing petition as the basis thereof are in all respects true.

(S) Thomas W. Cunningham.

Sworn to and subscribed
before me this 10th day of
May, A. D. 1928.
(S) George Brodbeck,
Clerk U. S. District Court E. D. of Pa.

ORDER ALLOWING APPEAL.
(Filed May 10, 1928.)

AND Now, to wit: this 10th day of May, A. D., 1928, it is ORDERED that an appeal be allowed as prayed for:

AND IT IS FURTHER ORDERED that said appeal act as a supersedeas staying the execution of the order or judgment and warrant of removal upon relator entering bond in the sum of $1,000.00.

By the Court
(S.) DICKINSON, *J.*

PRÆCIPE FOR TRANSCRIPT OF RECORD.
(Filed May 17, 1928.)

To the Clerk, U. S. District Court Eastern District of Penna.:

In making up the transcript of record sur appeal in the above case, you will include the following:

Docket Entries.
Affidavit for Warrant of Arrest.
Warrant of Arrest.
Certified Copy of Indictment.
Testimony before Senate Committee at Chicago, Ill.
Testimony before Senate Committee at Washington, D. C.
Opinion, Dickinson, J.
Petition for Writ of Habeas Corpus and remanding relator to custody.
Order dismissing Petition for Writ of Habeas Corpus.

Assignments of Error.
Petition for Appeal.
Order allowing Appeal.
Order allowing Supersedeas.
Præcipe for Transcript of Record.
Clerk's Certificate.

and no others.

BENJAMIN M. GOLDER,
Attorney for Relator.

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF PENNA., } *ss.:*

I, GEORGE BRODBECK, Clerk of the United States District Court in and for the Eastern District of Pennsylvania, do hereby certify that the annexed and foregoing is a true and full copy of so much of the pleas and proceedings; in the case of United States of America ex rel. Thomas W. Cunningham vs. W. Frank Mathues, United States Marshal, No. M-140 March Term, 1928; as per præcipe filed, a copy of which is hereto attached, the transcript of record in the above entitled cause is to include, ——————————————— now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Philadelphia this 27th day of July, A. D. 1928.

GEORGE BRODBECK,
Clerk.
By LEO A. LILLY.

(Seal)

TRAVERSE TO RETURN TO WRIT OF HABEAS CORPUS.

(Filed December 23, 1930.)

To the Honorable, the Judges of the District Court of the United States for the Eastern District of Pennsylvania:

THOMAS W. CUNNINGHAM, being duly sworn according to law, and on his oath, traverses the return to writ of habeas corpus filed by Walter C. Fetters, in the above case, in manner following:

1. Paragraph 1 admitted.

2. Deponent admits the record facts as alleged in paragraph 2 but avers that his detention is illegal and incorporates herein by reference the allegations contained in paragraphs 4 and 5 of his petition for habeas corpus.

3. Paragraph 3 admitted.

4. Paragraph 4 denied. Deponent incorporates herein by reference the allegations contained in paragraphs 4 and 5 of his petition for writ of habeas corpus.

5. Paragraph 5 denied. Deponent incorporates herein by reference the allegations contained in paragraphs 4 and 5 of his petition for a writ of habeas corpus.

WHEREFORE deponent prays that he be forthwith discharged.

(Sgd.) THOMAS W. CUNNINGHAM.

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF PENNSYLVANIA, } *ss.:*

THOMAS W. CUNNINGHAM, being duly sworn according to law, deposes and says that he read and signed the foregoing traverse to return to writ of habeas corpus and that the facts herein contained are true.

(Sgd.) THOMAS W. CUNNINGHAM.

Sworn to and subscribed before me this twenty-third day of December, A. D. 1930.

(Sgd.) GEORGE BRODBECK,
Clerk U. S. District Court E. D. of Pa.

STIPULATION OF COUNSEL.

(Filed December 23, 1930.)

AND NOW, December 23, 1930, it is stipulated and agreed between counsel for both parties that the hearing in the above entitled habeas corpus proceeding shall be determined upon the petition, the writ, the return of the respondent to the writ, and traverse to the return, including the former habeas corpus proceeding brought by the relator against W. Frank Mathues, United States Marshal, to No. 140 M of 1928, which appears in "Exhibit B" annexed to and made a part of the return of the respondent to the writ of habeas corpus issued herein.

(Sgd.) BENJ. M. GOLDER,
(Sgd.) OTTO KRAUS, JR.,
For Relator.

(Sgd.) HOWARD BENTON LEWIS,
For the Respondent.

OPINION

Sur Hearing on Habeas Corpus, on Petition, Return, Traverse and Proofs.

(Filed December 23, 1930.)

DICKINSON, *J.*

There is danger that the final disposition of this cause may be delayed and its merits lost in a maze of procedural questions. A recapitulation may make clear the present record situation. The main question to be determined in this cause had been fully discussed in the closely akin case of

U. S. v. Barry, 25 (2d) Fed. Rep., 733.

The view taken of the first case had made the disposition of the second by this Court almost perfunctory. To expedite a ruling it was arranged that a warrant be applied for and issued and hearing given the defendant by a Judge of this Court, sitting as a Committing Magistrate, and the defendant discharged or held for trial as the Judge might decide; if the defendant was held, a motion for a warrant of removal of the defendant to the District Court of the District of Columbia should be made and issued or refused by a Judge of this Court; if the warrant issued, the defendant should be taken into custody by the Marshal and should thereupon petition for a writ of Habeas Corpus to have the lawfulness of his detention determined, the relator being enlarged upon bail pending the ruling in the Habeas Corpus proceeding. The cause was heard upon a Habeas Corpus hearing on Petition, Return, Traverse and Proofs. The only or main evidence upon which the defendant could be held was an indictment found in the District of Columbia District, charging the offense of a refusal to answer pertinent questions propounded by a Committee of the Senate

of the United States. The defendant in the main contended that the questions set forth in the indictment were not pertinent and hence that no legal offense was charged. If this contention had been upheld, the relator had the right to his discharge on Habeas Corpus, because clearly no defendant should be sent into another District for trial when the act with the commission of which he was charged constituted no crime under the law. This Court, however, held to the view that the question raised was a question to be determined by the trial Court and not by the Habeas Corpus Court.

U. S. ex rel. v. Mathues, 26 (2d) Fed. Rep., 272.,

The relator was accordingly remanded to the custody of the Marshal for removal. He thereupon exercised his right of appeal to the Circuit Court of Appeals of the Third Circuit, by which Court the judgment of this Court was reversed.

U. S. ex rel. v. Mathues, 33 (2d) Fed. Rep., 261.

Application for a certiorari was then made to the Supreme Court, before the hearing of which the Marshal of this District, who was the defendant in the Habeas Corpus proceeding, went out of office, and was succeeded by the present Marshal. No substitution of the new Marshal having been made within the time prescribed by the Act of Congress, the proceeding was, on suggestion of this fact, held to have abated, and a mandate was sent down to this Court directing us to abate the writ before issued. This has accordingly been done. The defendant in the prosecution and the writ of removal has surrendered himself to the Marshal in relief of his bail and is now in the custody of the Marshal. He has thereupon petitioned this Court for

a writ of Habeas Corpus, complaining of his detention under the original warrant of arrest and his commitment. The writ was allowed and the Marshal has made return that the relator is in his custody under the warrant of removal. The hearing on the Habeas Corpus was agreed should be determined upon the evidence taken at the former hearing, which, by stipulation, is made the evidence in the present proceeding.

DISCUSSION.

The relator attaches importance to the distinction indicated between detention under the warrant of removal and the commitment. We do not see that it has any. The relator is found to be in fact held by the Marshal by authority of the original warrant of arrest, the commitment and the warrant of removal, each and all. The only question to be determined by this Court is whether we are at liberty to adhere to the judgment before reached that the relator should be remanded, or whether we are bound to accept and to follow the ruling of the Circuit Court of Appeals that he should be discharged without day.

In view of the almost certainty that this cause will have an appellate experience, the disposition we make of it is barely more than formal. The sole effect of it is to put on one party or the other the burden of appeal and hence the expense of printing the larger Paper Book. The only question is what is for this Court the law of the case? It seems clear that it is what the Circuit Court of Appeals has declared it to be.

U. S. ex rel. Cunningham v. Mathues, 33 (2d) F. R. 261.

The following of the ruling of the Circuit Court of Appeals calls for an order discharging the relator without day, and a formal order to this effect may be submitted.

ORDER DISCHARGING RELATOR.

(Filed December 23, 1930.)

AND NOW, to wit: December 23, 1930, *sur* hearing on habeas corpus, on petition, writ, return of the respondent to the writ, traverse and proofs, it is hereby ORDERED, ADJUDGED, and DECREED that THOMAS W. CUNNINGHAM, the above-named relator, be, and he is hereby DISCHARGED from the custody of the United States Marshal for the Eastern District of Pennsylvania, without day, upon the relator entering into his own recognizance in the sum of $1000, without surety in accordance with clause 3 of Rule 31 of the Circuit Court of Appeals for the Third Circuit.

By THE COURT,
(Sgd.) DICKINSON, *J.*

Exception to the above order was asked for by respondent but refused, because the order is not the subject of exception.

(Sgd.) O. B. DICKINSON, *J.*

BAIL BOND.

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF PENNSYLVANIA, }

I, THOMAS W. CUNNINGHAM, residing at 2116 Cherry Street, Philadelphia, Pennsylvania, acknowledge myself to be jointly and severally indebted to the United States of America in the sum of one thousand ($1000) dollars, lawful money of the United States of America, to be levied of my goods and chattels, lands and tenements, upon this condition:

That if the said THOMAS W. CUNNINGHAM, the relator, shall be and appear at the District Court of the United States for the Eastern District of Pennsylvania upon the determination of the proceedings of the appeal of WALTER C. FETTERS, U. S. Marshal for the Eastern District of Pennsylvania, the respondent, to the Circuit Court of Appeals for the Third Circuit, and the receipt and filing of a mandate or other process or certificate showing the disposition thereof by the said Court of Appeals, or the Supreme Court of the United States, or, within five days thereafter, to answer and obey whatever final order or judgment, except as to costs, shall be made in the premises, and not depart said Court without leave thereof, then this recognizance to be void; otherwise, to remain in full force and virtue.

IN THE EVENT OF THE FOREGOING RECOGNIZANCE being forfeited, I do hereby empower the United States Attorney for the Eastern District of Pennsylvania, or any of his assistants, to appear for me, and with or without declaration or statement filed for the above penalty, thereupon, to confess judgment or judgments against me, for the said principal sum and costs as of any session of the District Court of the United States for the Eastern District of Pennsylvania; stay of execution and inquisition and extension upon any levy on real estate is hereby waived and condemnation agreed to, and the exemption of personal property from levy and sale on any execution hereon is also hereby expressly waived and no benefit of exemption shall be claimed under and by virtue of any exemption law now in force or which may be hereafter passed; and for so doing, this shall be sufficient warrant. A copy of this bond and warrant being filed in said action, it shall not be necessary to file the original as a warrant of attorney, any law or rule of Court to the contrary notwithstanding.

THOMAS W. CUNNINGHAM. (Seal)

Taken, acknowledged and subscribed to before me this twenty-third day of December, 1930.

GILBERT W. LUDWIG,
Deputy Clerk, U. S. D. C.

PETITION FOR APPEAL.

(Filed December 23, 1930.)

To the Honorable the Judges of the District Court:

The petition of the above-named Walter C. Fetters, United States Marshal for the Eastern District of Pennsylvania, respectfully represents:

That your petitioner is aggrieved by the order or judgment of the said District Court entered on the twenty-third day of December, 1930, sustaining the writ of habeas corpus in the above proceeding and discharging Thomas W. Cunningham, the above-named relator, from the custody of the United States Marshal for the Eastern District of Pennsylvania without day.

That your petitioner prays that an appeal to the United States Circuit Court of Appeals for the Third Circuit from the said order and judgment be allowed him and that a transcript of the record of the proceedings and papers on which said order and judgment were made, all duly authenticated, may be sent to the United States Circuit Court of Appeals for the Third Circuit, and that such other and further proceedings may be had as may be proper in the premises, and your petitioner files herewith his assignments of error.

For the United States Attorney for the Eastern District of Pennsylvania:

(Sgd.) HOWARD BENTON LEWIS,
Assistant United States Attorney.

ORDER ALLOWING APPEAL.

(Filed December 23, 1930.)

Now, to wit, this twenty-third day of December, 1930, it is ordered that an appeal be allowed as prayed for and that a certified transcript of the record and all proceedings be transmitted to the Circuit Court of Appeals for the Third Circuit.

By THE COURT,

(Sgd.) DICKINSON, *J.*

ASSIGNMENTS OF ERROR.

(Filed December 23, 1930.)

AND Now, to wit: this twenty-third day of December, 1930, comes Walter C. Fetters, United States Marshal for the Eastern District of Pennsylvania, the above-named respondent, and assigns the following errors in the proceedings, orders, holdings and judgment of the said District Court in the above-entitled cause.

1. The Court erred in sustaining the writ of habeas corpus in the above case and in ordering that the relator, Thomas W. Cunningham, be discharged from the custody of the United States Marshal for the Eastern District of Pennsylvania, without day, as follows:

> "AND Now, to wit: December 23, 1930, sur hearing on Habeas Corpus, on Petition, Writ, Return of the respondent to the Writ, Traverse and Proofs, it is hereby Ordered, Adjudged and Decreed that Thomas W. Cunningham, the above-named relator, be, and he is hereby discharged

from the custody of the United States Marshal for the Eastern District of Pennsylvania, without day, upon the relator entering into his own recognizance in the sum of $1,000, without surety in accordance with Clause 3 of Rule 31 of the Circuit Court of Appeals for the Third Circuit.

"By THE COURT,
"(Sgd.) DICKINSON, *J.*

"Exception to the above order was asked for by respondent but refused, because the order is not the subject of exception.

"(Sgd.) O. B. DICKINSON, *J.*"

2. The Court erred in not discharging the writ of habeas corpus and in not remanding the relator into the custody of the United States Marshal for the Eastern District of Pennsylvania, to be removed by the said Marshal to the District of Columbia in order that he may be dealt with according to law.

For the United States Attorney for the Eastern District of Pennsylvania:

(Sgd.) HOWARD BENTON LEWIS,
Assistant United States Attorney.

NOTICE OF APPEAL.

To the Clerk, United States Circuit Court of Appeals, Third Circuit, Philadelphia, Pennsylvania:

Please be advised that upon motion of counsel for defendant in the above-entitled cause, the Court (Dickinson, *J.*), has allowed an appeal to the United States Circuit Court of Appeals, Third Circuit, Philadelphia, Pennsylvania.

GEORGE BRODBECK,
Clerk.

By (Sgd.) E. G. JOHNSON,
Deputy Clerk.

HOWARD B. LEWIS, ESQ.,
PAUL FREEMAN, ESQ.,
For Appellant.

BENJAMIN M. GOLDER, ESQ.,
For Appellee.

CITATION.

UNITED STATES OF AMERICA, *ss.*:

THE PRESIDENT OF THE UNITED STATES OF AMERICA,
To United States of America, ex rel. Thomas W. Cunningham,

GREETING:

YOU ARE HEREBY CITED AND ADMONISHED to be and appear at a United States Circuit Court of Appeals for the Third Circuit, to be holden at the City of Philadelphia within thirty days, pursuant to a petition for appeal and order allowing same, filed in the Clerk's office of the United States Circuit Court of Appeals for the Third Circuit, wherein Walter C. Fetters, United States Marshal, is appellant and you are appellee to show cause, if any there be, why the judgment rendered against the said appellant as in the said petition for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf

WITNESS, the HONORABLE OLIVER B. DICKINSON, Judge of the District Court of the United
(Seal) States, this twenty-sixth day of December, in the year of our Lord one thousand nine hundred and thirty.

(Sgd.) O. B. DICKINSON,
Judge United States District Court
Eastern District of Pennsylvania.

Service acepted.

(Sgd.) BENJ. M. GOLDER,
Attorney for Appellee.

DOCKET ENTRIES.

United States of America
v.
Thomas W. Cunningham.

Commissioners' Return, No. 113 of 1928.

May 1, 1928.	Affidavit filed.
May 1, 1928.	Warrant of Arrest filed.
May 4, 1928.	Hearing before Dickinson, J., sitting as a U. S. Commissioner.
May 9, 1928.	Opinion, Dickinson, J., directing Warrant of Removal, etc., filed.
May 10, 1928.	Warrant of Removal Exit.
May 10, 1928.	Copy of Indictment in Supreme Court of District of Columbia filed.
May 17, 1928.	Testimony filed.
Dec. 23, 1930.	The defendant comes into Court and surrenders himself to the United States Marshal.

WARRANT OF REMOVAL.

(Filed May 10, 1928.)

THE UNITED STATES OF AMERICA, } No. 113 of 1928.
EASTERN DISTRICT OF PENNSYLVANIA, } *Sct.:*

THE PRESIDENT OF THE UNITED STATES OF AMERICA,
To the Marshal of the Eastern District of Pennsylvania,
GREETINGS:

WHEREAS, Thomas W. Cunningham has been brought before me upon a commitment made by me, a District Judge sitting as a committing magistrate for the purpose of obtaining a warrant for the removal of the said Thomas W. Cunningham to the District of Columbia in which district the offense for which said prisoner has been so committed is to be tried, the copy of which commitment returned by the United States Marshal, as also all other proceedings, are hereto annexed;

AND WHEREAS, the United States District Attorney for the Eastern District of Pennsylvania has made application to me, under the provisions of the statutes of the United States in the behalf provided, for a warrant for the removal of the said prisoner to the said District of Columbia and an examination into the matter having been made by me;

NOW, THEREFORE, YOU ARE HEREBY COMMANDED, in the name of the PRESIDENT OF THE UNITED STATES OF AMERICA, to remove the said prisoner now in your custody forthwith to the said District of Columbia and there deliver him to the Marshal of the said District of Columbia or some other proper officer authorized to receive the said prisoner, in order that he may be dealt with according to law, and make return what you shall

have done, together with this writ, to the Clerk of the Supreme Court of the District of Columbia.

GIVEN under my hand and the seal of the District Court of the United States for the Eastern District of Pennsylvania, at the (Seal) City of Philadelphia, this tenth day of May, A. D. 1928, and in the One hundred and fifty-second year of the Independence of the United States.

(Sgd.) OLIVER B. DICKINSON,
Judge of the District Court.

Attest:

(Sgd.) GEORGE BRODBECK,
Clerk District Court.

TESTIMONY AT NEW HABEAS CORPUS HEARING.

(December 23, 1930.)

IN THE

DISTRICT COURT OF THE UNITED STATES,

FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

United States of America, ex rel. Thomas W. Cunningham

v.

Walter C. Fetters, United States Marshal.

Before HON. OLIVER B. DICKINSON, *J.*

Philadelphia, Pa., Tuesday, December 23, 1930, at 11 o'clock A. M.

Present: HOWARD BENTON LEWIS, ESQ., Assistant United States Attorney, for the Government;
BENJAMIN M. GOLDER, ESQ., for the relator.

THE COURT: You are now asking for a writ of habeas corpus?

MR. GOLDER: Yes, sir. The answer and the traverse are both ready to be filed, sir, today.

THE COURT: This is a petition for a writ?

MR. GOLDER: Yes, sir.

THE COURT: I will allow the writ.

MR. GOLDER: If the Court please, we have taken the liberty to put the order on the outside of the petition,

so that it will be returnable forthwith. Mr. Lewis has the answer.

THE COURT: Writ allowed, returnable forthwith.

MR. GOLDER: We put today's date in, which is December 23d.

THE COURT: Now, you have your writ of habeas corpus allowed.

MR. GOLDER: Yes, sir.

THE COURT: Your return, have you your return?

MR. LEWIS: May we delay until we get the writ, sir? I have the return ready. The Marshal, having accepted service of the writ and acknowledged service, I now submit a return to the writ of habeas corpus.

MR. GOLDER: We filed a traverse, your Honor.

MR. LEWIS: The Government submits a stipulation between counsel that the hearing shall be determined upon the petition, writ, return of the respondent to the writ, and traverse to the return, including the former habeas corpus proceedings brought by the relator against W. Frank Mathues, United States Marshal, to No. 140-M of 1928. It appears in Exhibit "B" annexed to and made a part of the return of the respondent to the writ of habeas corpus issued herein.

THE COURT: All right. Then, you are ripe for a ruling?

MR. GOLDER: Yes, sir.

THE COURT: Then, you can hand in your order discharging the relator from custody without day.

MR. LEWIS: The Government hands in an order discharging the relator from custody without day.

May I now file, sir, petition for appeal?

THE COURT: You may, if you like. I assume that you are willing to be discharged?

MR. GOLDER: Yes, sir.

MR. LEWIS: The Government files petition for appeal, together with assignments of error.

THE COURT: Bill filed contemporaneously with this decree and opinion.

MR. LEWIS: The Government offers an order allowing the appeal, if the Court please.

THE COURT: All right. I will allow the appeal. Do you want him admitted to bail?

MR. LEWIS: Yes; I have an order allowing bail, if the Court please.

THE COURT: What do you mean by that?

MR. LEWIS: I mean, sir, that under the rule of the Circuit Court, the relator, when discharged under the writ, is required, pending appeal, to execute a recognizance before the clerk of the District Court, with surety, conditioned upon his appearance at the District Court to answer the judgment of the United States Circuit Court of Appeals.

THE COURT: No; I do not think you have that right.

MR. LEWIS: Your Honor will find that in the rules of the Court.

THE COURT: No; I do not think that is quite the rule. Now, I think that the proper practice is——

MR. LEWIS: 224 Federal.

THE COURT: —that we admit the relator to bail pending the ruling of this Court; then discharge him. Now, that relieves the bail; you take your appeal. If

your appeal is sustained, then the order of this Court, discharging him, goes for nothing; but how can we admit a man to bail after we discharge him?

MR. LEWIS: All right.

THE COURT: Mr. Golder, I assume that there is no objection to this relator under bail pending the ruling of this Court on his petition for a habeas corpus?

MR. GOLDER: No, sir.

THE COURT: Well——

MR. GOLDER: I understood from Mr. Kraus, who discussed the matter with Mr. Lewis, that the rule of the Circuit Court is to the effect that bail should be entered. I didn't look it up, and I don't know, your Honor.

MR. LEWIS: Rule 31, sir.

MR. GOLDER: I don't see the logic of it.

THE COURT: I do not see how, in the world, I can discharge him and then hold him for bail.

MR. GOLDER: May I ask that the sheriff be allowed to sign his own bond?

THE COURT: I will make an order discharging him. Where is the order?

MR. LEWIS: Here is the order allowing bail.

THE COURT: I know, but where is the order discharging him?

MR. LEWIS: I handed that up to your Honor.

THE COURT: I think that he ought to be discharged under Section 3.

MR. LEWIS: I think not, sir. We take an appeal after you have discharged him.

THE COURT: What control have I over him after I have discharged him?

MR. LEWIS: But we take an appeal immediately.

THE COURT: I do not care whether you do or do not, but under this rule, as I interpret this rule, I ought not to discharge him absolutely, but I ought to discharge him so that he will give a recognizance. (Reading.)

MR. LEWIS: Yes, sir; I have since taken an appeal.

THE COURT: Before he is discharged, he enters into that recognizance; isn't that right? That looks to me perfectly consistent and perfectly clear, but for me to hold him without bail, after I discharge him——

MR. GOLDER: May I ask your Honor that the Sheriff be permitted to enter bail without surety?

THE COURT: What rule is it?

MR. LEWIS: The Circuit Court of Appeals for the Third District, Rule 31.

THE COURT: Rule 31. I have conditioned this upon the relator entering into his own recognizance, without surety, in accordance with Clause 3 of Rule 31 of the Circuit Court of Appeals for the Third District.

MR. LEWIS: Will your Honor, also, sign my order for bail on appeal, that I handed up?

THE COURT: Well, I don't think I have anything to do with that. The Circuit Court of Appeals does that. You say, "with surety"?

MR. LEWIS: No; "without surety." You can strike that out, sir, if you will.

THE COURT: I don't see any occasion for that. I will mark it "$1,000." Now, I have required him to enter into that recognizance before he is released from

the custody of the Marshal. I think that holds him. If you think this other is required, you will have to go to the Circuit Court of Appeals, because I think it is not for me to say under what condition they will hear the appeal.

MR. LEWIS: Of course, sir, I have entitled it in this District Court of the United States.

THE COURT: I know you have, and I understand your point, but it seems to me——

MR. LEWIS: You see, sir, when you discharge this relator from custody today, I had not yet taken an appeal.

THE COURT: I understand that, but I have released him upon the condition that he enter into bail, that pending an appeal he will hold himself subject to the orders of the Appellate Court, and I do not see why that does not hold him, and I do not see where I have authority to do anything more. If the Circuit Court of Appeals feels that the provision that I have made for his further custody is not sufficient, I think they can order him to give such bail, pending the appeal, as they see fit.

MR. LEWIS: You see, this bail is for his appearance before you?

THE COURT: Which bail?

MR. LEWIS: This bail on appeal.

THE COURT: But I have required him to give bail as called for by this rule, which is for his appearance to answer the judgment of the Appellate Court.

MR. LEWIS: For his appearance before your Honor.

THE COURT: He gives that bail, and the bail is as the rule requires. If that phraseology is unhappily

chosen, I can say that I did not choose it, but what is the use of talking about it? I do not think that there is any practical danger that he will be wanting when his presence is required.

(Here ensued discussion off the record.)

THE COURT: I will enter a refusal to do that, on the ground that I have conditioned his discharge upon his giving that security and that there is no occasion for a second order upon that. If you want me to put that on the record for you, I will put it on the record for you.

MR. LEWIS: Just note an exception to that.

PRÆCIPE FOR TRANSCRIPT OF RECORD.

(Filed December 30, 1930.)

To the Clerk, United States District Court, Eastern District of Pennsylvania.

Sir:

In making up the transcript of record sur appeal in the above case, you will include the following:

Docket entries.
Petition for writ of habeas corpus.
Writ of habeas corpus.
Return to writ of habeas corpus.
Traverse to return to writ of habeas corpus.
Stipulation of counsel as to proofs of hearing.
Opinion, Dickinson, J.
Order discharging relator on entry of recognizance pending appeal.
Recognizance of relator pending appeal.
Petition for appeal.
Assignments of error.

Order allowing appeal.
Notification of appeal to clerk, U. S. Circuit Court of Appeals, Third Circuit.
Citation to relator as appellee to appear and show cause on said appeal.
Docket entries, Commissioner's Return No. 113 of 1928.
Warrant of removal.
Notes of testimony taken at habeas corpus hearing, December 23, 1930.
Præcipe for transcript of record.
Clerk's certificate.

and no others.

For the United States Attorney,
(Sgd.) HOWARD BENTON LEWIS,
Assistant United States Attorney.

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF PENNA., } *ss.:*

I, GEORGE BRODBECK, clerk of the United States District Court in and for the Eastern District of Pennsylvania, do hereby certify that the annexed and foregoing is a true and full copy of the original so much of the pleas and proceedings; in the case of UNITED STATES OF AMERICA ex rel. THOMAS W. CUNNINGHAM v. WALTER C. FETTERS, United States Marshal for the Eastern District of Pennsylvania, No. M-274; as per præcipe filed, a copy of which is hereto attached, the transcript of record in the above-entitled cause is to include, now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of
(Seal) the aforesaid Court at Philadelphia this seventh day of January, A. D. 1931.

(Sgd.) GEORGE BRODBECK,
Clerk.

126 United States of America, Eastern District of Pennsylvania,
Third Judicial Circuit, Sct.

I, William P. Rowland, clerk of the United States Circuit Court of Appeals, for the third circuit, do hereby certify the foregoing to be a true and faithful copy of the original transcript of record in the case of: Walter C. Fetters, U. S. marshal, appellant vs. U. S. ex rel. Thomas W. Cunningham, appellee, No. 4543, on file, and now remaining among the records of the said Court, in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 2nd day of February, in the year of our Lord one thousand nine hundred and thirty-one and of the independence of the United States the one hundred and fifty-fifth.

WM. P. ROWLAND,
Clerk of the U. S. Circuit Court of Appeals, Third Circuit.

37454—31

Supreme Court of the United States

Order allowing certiorari

Filed March 2, 1931

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE: 1931